LAWS OF THE CHURCH OF IRELAND.

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THE LAW

OF

THE CHURCH OF IRELAND:

AN ESSAY.

BY THE

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PREFACE.

A Treatise on the Law of the Church of Ireland is much required; and it is to be regretted that, during the quarter of a century that has elapsed since its Disestablishment, some eminent Ecclesiastical lawyer, such as Dr. BALL or Dr. LONGFIELD, did not undertake the task; but heretofore no attempt has been made to supply the want; and therefore, feeling that even an imperfect consideration of the subject may be of use, and may induce some person with higher qualifications as an Ecclesiastical lawyer, and with more energy and leisure than I can command, to produce a comprehensive treatise on the subject, I venture to submit to the Church of Ireland this Essay, composed in the spirit of affection and loyalty, and a simple desire to promote its welfare.

In a Paper, read before the Church Congress, at Worcester, in 1894, I sketched the history of the Church of Ireland since its Disestablishment

and Disendowment, and I venture to say that the consideration of that Paper and this Essay is calculated to satisfy all reasonable men that the Church has come out from the ordeal of Disestablishment and Disendowment with credit and an established reputation for wisdom as regards secular matters and for unfailing loyalty to the principles of the Reformation.

Many legal subjects are not discussed in this Essay, but I think I have selected those topics most interesting, most important, and most difficult.

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ERRATA.

Page 1, line 13 from foot, *for* constitutes and is *read* constitute and are.
,, 15, last line, *dele* inverted commas.
,, 21, line 17, *for* clergy *read* clergymen.
,, 23, ,, 3, *for* nemo, &c., *read* non potest esse judex et pars.
,, 60, ,, 21, *for* proscription *read* prescription.
,, 64, ,, 14, *for* Killindrey *read* Killinchy.
,, 65, ,, 3 from foot, *insert* C. *between* C. *and* 59.
,, 69, ,, 8 ,, *insert* P. *after* 1893.
,, 73, lines 8, 9, 13, *insert* P. *after* 1892, 1893, 1895, *respectively*.
,, 85, line 2, *for* 2 Sec. *read* 2 Lee.

THE

LAW OF THE CHURCH OF IRELAND.

CHAPTER I.

PRINCIPLES OF THE LAW OF VOLUNTARY CHURCHES, AND ESPECIALLY OF THE CHURCH OF IRELAND.

THE Ecclesiastical Law of Ireland, and the articles, doctrines, rites, rules, discipline, and ordinances of the Church of Ireland, existing and in force on 1st January, 1871, subject to all modifications and alterations since made therein by the General Synod of the Church, constitutes and is the law of the Church of Ireland (Irish Church Act, 1869). All members of the Church are also subject to the civil law, which is supreme.

It is proposed to consider in this Paper the principles on which the law is founded, some of the details of the law, the nature and extent of the obligations of obedience to the law, and the sanctions by which it is fortified.

This Paper will be conversant with the interpretation of Acts of Parliament and Statutes of the General Synod; and it is intended to adopt the principle of construction enunciated by Tindal, C.J.,

in The Sussex Peerage Case (11 C. & Fin. 143):—"The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such cases best declare the intentions of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the Statute."

The Irish Church Act, 1869 (the Statute of Disestablishment), enacted, § 21, that on the 1st January, 1871, all jurisdiction of all Ecclesiastical Courts and persons in Ireland existing at the time of the passing of the Act, having any jurisdiction exercisable in any cause or matter, matrimonial, spiritual, or ecclesiastical, or in any way connected with the ecclesiastical law of Ireland, should cease, and "the Ecclesiastical Courts and Registries Act, Ireland, 1864," be repealed, and the Ecclesiastical Law of Ireland, except so far as related to Matrimonial causes and matters, cease to exist as law, *i.e.* as civil law, or as affecting persons who are not members of the Church. Jurisdiction is defined in the Act (section 74) to mean legal and coercive power, and declared not to extend to or include any authority which may be exercised in a voluntary religious association upon the footing of mutual contract. This exception of Matrimonial causes and matters applies to suits or proceedings in the Ecclesiastical Courts concerning marriage. The law relating to Divorce *a mensa*

et toro, to Nullity of marriage, and Validity of marriage, to Alimony, Jactitation of marriage, Restitution of conjugal rights, &c., was within the jurisdiction of, and was administered by, the Ecclesiastical Courts, and all this law was preserved; but the obligations of the clergy of the Established Church in relation to marriage do not seem to come within this exception, or to be *thereby* preserved in force against the clergy of the Disestablished Church. As to the meaning of the words "causes and matters," the 27 & 28 Vict. c. 54, sections 69, 70, and 71, may be referred to.

This 21st section of the Church Act, having regard to a civil law which had made representative synods and conventions uulawful, would in effect have placed the Church of Ireland outside the pale of law, and given it up to internal anarchy and chaos, if the Legislature had not provided a remedy for the evil. Such a remedy, however, is to be found in the 19th section, by which the Church was relieved from the disability, and was enabled to hold representative conventions, and synods of bishops, clergy, and laity, with power to frame constitutions and regulations for the general management and good government of the Church of Ireland, and the property and affairs thereof. This provision was followed by the 20th section, which enacted that the then present ecclesiastical law of Ireland, and the articles, doctrines, rites, rules, discipline, and ordinances of the Church of Ireland, with and subject to such modifications or alterations as, after the 1st of January, 1871, might be duly made therein according to the constitution of the said Church for the time being, should be deemed to be binding on the members of the Church for the

time being in the same manner as if such members had mutually contracted to observe the same and should be capable of being enforced in the Temporal Courts in relation to any property which under or by virtue of the Act is reserved or given to or taken and enjoyed by the said Church or any member thereof in the same manner and to the same extent as if such property had been expressly given upon trust for persons who should observe and be in all respects bound by the said Ecclesiastical law and the said articles, doctrines, rites, rules, discipline, and ordinances, subject as aforesaid.

These sections empowered the establishment of a General Synod, representing bishops, clergy, and laity, and enabled that Synod to alter and add to the former Ecclesiastical law of the Church, to modify and change its articles, doctrines, rites, rules, discipline, and ordinances, to ordain punishments for the violation of the laws of the Church, and to establish Church tribunals to declare the law and try and pronounce judgment upon offenders against its laws. Doubtless there are limitations to the power of the Synod to make laws, and to the jurisdiction of the Church tribunals to enforce their observance. The Synod cannot make any law, any valid law, inconsistent with the laws of the State, "the law of the Land is Supreme" (O'Keefe *v.* Cullen, I. R. 7 C. L. 371); nor can the Synod make any law ousting the proper jurisdiction of the temporal Courts (Scott *v.* Avery, 5 H. L. C. 811); nor can it make laws investing the tribunals with any coercive jurisdiction. The coercive jurisdiction of the Courts of the Established Church was taken away at disestablishment, and none was given in place of it (§ 20). The old process, for instance,

of sequestration cannot be used by the Church Courts. If possession is wrongfully withheld, as of a church, or glebe-house, or land, possession can only be obtained by an action of ejectment in the temporal Courts, to be brought by the Representative Body—the Church Corporation in whom, generally speaking, all the property of the Church is vested as a trustee; and a similar rule obtains in cases of default by debtors to the Church.

The laws of the Church, subject to the limitations to which attention has been called, are of binding obligation upon all members of the Church of Ireland, on bishops, clergymen, and laymen, without exception; all alike are bound to submit to the jurisdiction and the decisions of the Church tribunals.

This subject was considered in the case of O'Keefe *v.* Cullen (I. R. 7 C. L. 319), which may be regarded as a repertory of the law of voluntary churches. A leading case is Long *v.* the Bishop of Capetown (6 M. P. C., New S., 461), in which the judgment was pronounced by Lord Kingsdown, a Judge of the highest character. The members of any religious association, other than an established Church, "may," he says, "adopt rules for enforcing discipline within their body, which will be binding on those who expressly, or by implication, have assented to them. It may be further laid down that when any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation, the decision of such tribunal will be binding when it has acted within

the scope of its authority, and has observed such forms as the rules require, if any forms be prescribed, and if not, has proceeded in a manner consonant with the principles of justice. In such cases the tribunals so constituted are not in any sense courts; they derive no authority from the Crown; they have no process of their own to enforce their sentences; they must apply for that purpose to the Courts established by law, and such Courts will give effect to their decisions as they give effect to the decisions of arbitrators whose jurisdiction rests entirely upon the agreement of the parties. These," says Lord Kingsdown, "are the principles upon which the Courts have always acted in the disputes which have arisen between members of the same religious body, not being members of the Church of England (the established Church of the land). To these principles, which are founded on good sense and justice, and established by the highest authority, we desire strictly to adhere." Lord Kingsdown then proceeded to discuss the question how far the plaintiff in the suit was subject, in point of law, to the Bishop of Capetown, not dealing, as he said, with his obligations *in foro conscientiæ*.

The question of want of assent cannot be raised by any member of the Church of Ireland as an objection to the jurisdiction of its tribunals, for, as has been seen, the Church Act has declared, without reference to any assent except that conclusively implied from the fact of membership, that the law of the Church, its rules, discipline, and ordinances (words which include the jurisdiction of its tribunals) for the time being shall be *deemed to be binding* on the members for the time being thereof, in the same

manner as if such members had mutually contracted and agreed to observe the same.

It is much to be desired that all members of the Church would seriously appreciate their obligation of obedience. They cannot wilfully transgress without disloyalty to their Church and ethical misconduct. If this consideration ought to be recognised universally by members of the Church, how much more by ministers who have formally and voluntarily subscribed an express promise of submission to the authority of the Church and its laws and tribunals, and on the faith of that promise have obtained and enjoy position and income. It needs not to resort to Christian ethics to prove that from such a promise results the very highest of obligations *in foro conscientiæ* to observe these laws, and that, not in the letter only, but in the spirit according to the intention of those by whom the promise was required. If any minister shall say my duty to God is supreme, be it so; but it is also a duty to God to observe vows of which the minister is reaping the fruit, and the reconcilement of these duties supposed to conflict can be found in the resignation of the advantages derived from the promise and concurrent release from the obligation.

Reference must be made to a proviso in the Church Act in these words (§. 20):—"Provided always that no alteration in the articles, doctrines, rites," or "formularies of the said Church shall be binding upon any ecclesiastical person now licensed as a curate or holding any archbishopric, bishopric, benefice, or cathedral preferment, being an annuitant or person entitled to compensation under this Act, who shall within one month after the making of such alteration signify in writing to the Church Body his dissent

therefrom, so as to deprive such person of any annuity or other compensation to which under this Act he may be entitled." This proviso has been misunderstood. The whole clause is limited by the words with which it concludes, "*so as to deprive the protesting person of his annuity*"—of his annuity under the 14th, 15th, 16th, or 17th sect. of the Act. The allegiance of the man is not touched, his obligation and duty of obedience and submission are not affected. If he shall schismatically dissent from the laws of the Church and disobey he may still be cited before its tribunals, the tribunals may try the case and pronounce sentence—any sentence not involving *deprivation of his annuity under the Act*—which the Synod may have authorised the tribunal to pronounce for the offence, whether monition, suspension, or deprivation of his benefice, as the case may be. For instance, the law of the Church by an alteration of a rubric, etc., is that a new lectionary shall be used. Therefore, the use of the old lectionary would be a violation of the law of the Church, for which if a protesting presbyter he could not be deprived of his annuity, but, nevertheless, a schismatical offence for which the Courts might visit him with other punishment, even with that of deprivation of his benefice.

An opinion of Sir Roundell Palmer, afterwards the Earl Selbourne, has thrown some doubt upon the opinion that all the clergy of the Church were, and are, under an obligation of obedience to all the laws of the Church for the time being, and it may be well to discuss the subject more particularly. The Irish Church Act does not contain any exception of any member of the Church from the mutual contract to observe the whole law created by the 20th section;

therefore, the only question that can arise relates to the consequences of a breach of this contract. Is there a difference as regards one class of clergymen and another class, or one class of offence and another class in relation to their Church property? I take two classes of property, immovable property, such as churches and glebes, and the annuities provided by the Act.

The 12th section vests the churches and glebes in the Church Commissioners, subject to the life interests of the clergy. Thus, the churches and glebes were reserved to the clergy for their lives. This, without more, would be an absolute reservation; but the section concludes with the words, "in the same manner as if this Act had not passed"—words which apparently point to the fact that the life estates were not absolute, but were defeasable for various causes: but there is no mention of any discharge of duties as a condition. Sections 14 and 15 provide for each clergyman an annuity equal to his yearly ecclesiastical income, payable to him so long as he lives and continues to discharge such duties as he was accustomed, or would if this Act had not passed have been liable, to discharge, or any other spiritual duties substituted therefor with his consent and that of the Representative Body, or shall be disabled by any cause other than his own wilful default. This proviso as to discharge of duties is connected with annuities only, and cannot be imported into the reservation of section 12 as to churches and glebes. A question might arise with regard to the meaning of the word "duties." Possibly it relates to the minister's general duties as incumbent or curate of a parish from which he cannot be moved without his own consent, and from

which he cannot move without the consent of the Representative Body, rather than to the details of those duties, but it is not necessary to pursue this inquiry.

Then follows section 19, which, as we have seen, empowers the Synod to frame constitutions and regulations for general management and good government of the Church, the property, and officers thereof. Surely this section would enable the Synod to pass *a statute of uniformity*, to ordain punishments for variance of ritual, and establish tribunals to try offenders against such a statute. But section 20, after declaring of what the law of the Church shall consist and the mutual contract to be enforced in the temporal Courts, enacts that all property reserved, given to, or taken and enjoyed by, the clergy as *e. g.* churches, shall be taken as if such property had been expressly granted upon trust for persons who should observe and keep and be in *all* respects bound by the said ecclesiastical law, subject as aforesaid —*i. e.* subject to alterations by the General Synod. Can any doubt be entertained but that this trust governs sections 12, 14, and 15? The proviso which follows makes assurance doubly sure. If, by virtue of sections 12, 14, and 15, all the property reserved or given by the Act was indefeasably protected as long as the minister thought fit to perform his old duties, what occasion was there for protecting a *part* of that property from forfeiture by reason of non-observance of particular laws by a special class—that of protesting dissentients? There was a good reason for a distinction. The payment of an annuity without due service might be a pecuniary loss to the Church, but it did not involve moral or ecclesiastical evil. It was essential to the welfare of the Church that

service and ritual should be uniform. It would have been an intolerable thing that divers services and a discordant ritual should find place not only in separate parish churches but in the same church, the incumbent, it might be, following one and his curates another ritual, without a remedy for some 40 or 50 years, when all the protestors might be dead. The remedy is that which the Church possesses—that of the removal of the malcontent from his church and glebe by depriving him of the benefice.

The Act contains traces of an intention to safeguard the interests of the Church itself as paramount, regarding as far as was consistent with that primary object, the personal interests of the clergy.

An interesting letter from the Archbishop of Canterbury to the Queen is to be found in Archbishop Tait's "Memoirs," vol. ii., p. 13, dated 29th February, 1869:—

"The Archbishop hears with the greatest satisfaction from Mr. Gladstone that he is anxious to arrange the calculation of the life-interests of the present holders of benefices in Ireland in such a manner as *shall be most advantageous, not to the individual concerned, but to the Church at large.*" Of course such a document has no weight in the legal interpretation of the Act.

It may be found necessary in the consideration of future cases arising in the Church to examine further the principles of the laws of the Church of Ireland, the authority of its tribunals, and the obligation of its members to obedience. Illustrations useful for such an investigation are to be found in great variety in the books, and, amongst others, the cases of Dunbar *v.* Skinner (11 Dunlop R., 945), of Dr. Warren (a Wesleyan Methodist) in Grindrod's

"Compendium," 371, and Forbes *v.* Eden (Law Reports, Scotch Appeals, I., 571), in which the position of the voluntary Episcopal Church in Scotland was discussed, may be mentioned. In the latter case Lord Cranworth said: "If funds are settled to be disposed of amongst members according to their rules, the Court must necessarily take cognizance of these rules for the purpose of satisfying itself as to who is entitled to the funds; so, likewise, if the rules of a religious association prescribe who shall be entitled to occupy a house or to have the use of a chapel or other building."

CHAPTER II.

ELEMENTS OF THE LAWS OF THE CHURCH OF IRELAND.

Such, then, being the principles of the law of the Church of Ireland, and such the obligations of obedience resting on its members, it is proper to consider some of the details of this law.

The first part of the law, viz. the Ecclesiastical Law as it was in force on the 1st January, 1871, is to be found—(1) in Imperial Statutes and Canons not repealed by Parliament or altered by the General Synod ; (2) in the reports of the judgments and decisions of the Civil and Ecclesiastical Courts of England and Ireland, and (3) in treatises of recognised authority, such as Gibson's "Codex," Burns's "Ecclesiastical Law," edited by Phillimore ; Phillimore's "Ecclesiastical Law," 1873, and in the writings of Stephens, Cripps, and Archdeacon Stopford.

The most important Imperial Statute bearing on the subject is the Act of Union, passed on the 2nd July, 1800. In the Fifth Article we find this:—"That it be the Fifth Article of Union that the Churches of England and Ireland, as now by law established, be united into one Protestant Episcopal Church, to be called the United Church of England and Ireland, and that the *doctrine*, *worship*, *discipline*

and *government* of the said United Church shall be and shall remain in full force for ever as *the same are now by law established for the Church of England.*"

The words "doctrine, worship, discipline, and government" are not identical with the words of the Irish Church Act, 1869—"The present Ecclesiastical Law of Ireland and the present articles, doctrines, rules, discipline, and ordinances of the said Church." But they are substantially equivalent, and the true construction appears to be that by virtue of this Fifth Article of Union the Ecclesiastical Law of the Church of England in 1800 was made Ecclesiastical Law of the United Church, including the Church of Ireland; and the Ecclesiastical Law of the Church of Ireland as it existed in 1800 was repealed, so far as it was inconsistent with the Law of the Church of England. Statutes on matters of Ecclesiastical Law which, prior to the Union, were only English Statutes, and did not apply to Ireland, were extended, in their operation to Ireland, and Canons of the Church of England became Canons of the United Church. Possibly, it may be held that the effect of the Fifth Article was yet more extensive, and that not only were those parts of the Ecclesiastical Law of Ireland which were inconsistent with that of England repealed, but that the whole Ecclesiastical Law of Ireland existing prior to the Union was repealed by the general substitution of the English for the Irish code. Probably it was the intention of the Legislature that the Ecclesiastical Law of the United Church should be the same in Ireland and England—one Church one Law. But in the absence of decision it would be rash to dogmatise on the point. A case of Campbell *v.* Hunt, Clk., was heard in February,

1895, in the Court of the General Synod. The charge against Hunt was that he affirmed doctrines contrary to the Articles of Religion, and the prosecution was founded upon the provisions of the English Statute 13 Elizabeth, ch. 12, which, prior to the Union, had not any application to Ireland. The Court, constituted of the Lord Primate, the Bishop of Meath, the Bishop of Kilmore, Lord Justice Fitz Gibbon, Mr. Justice Holmes, Mr. Justice Monroe, and Mr. Justice Madden, found the respondent guilty, and did adjudge "that unless the respondent expressly retracts the errors of which he has been convicted the Court has no alternative but to pronounce the sentence of deprivation under the Statute of Elizabeth."

In the judgment of the Court we read, "the charge of affirming doctrines contrary to the Articles of Religion is preferred in the terms of the Statute 13 Elizabeth, ch. 12. This Statute is enforceable as regards the Church of England by the authority of the Ecclesiastical Courts, with an appeal to the Judicial Committee of the Privy Council. It formed part of the Law regulating the doctrine, worship, discipline, and government of the Church of England at the passing of the Act of Union." "By virtue of the Fifth Article of that Statute *the Ecclesiastical Law of the Church of England became the Ecclesiastical Law of the United Church of England and Ireland*, and so continued until the 1st of January, 1871."

The principle of this decision applies to extend to Ireland the force of all other English Statutes passed prior to the Union, so far as they affected Ecclesiastical Law, albeit not applicable to Ireland until the Union." Mr. Hunt did afterwards

retract. He was not deprived. He was condemned in costs.

The English and Irish Acts of Uniformity (14 Car. II., c. 4, and 17 & 18 Car. II., c. 6) require the use of the Book of Common Prayer and administration of the Sacraments and the form of Ordination and Consecration. This Law is now subject to the power of the General Synod to modify or alter. It makes *Episcopal* Ordination necessary for Ecclesiastical Office, and it enacts that no person whatsoever shall presume to *consecrate* and administer the Lord's Supper before such time as he shall be ordained a *priest.* This is the Positive Law of the Church of Ireland ; it is universally observed, and albeit opinions differ on the question whether this rule of law rests upon the foundation of Scripture or the custom of the Primitive Church, or the doctrines of the Churches of Ireland and England as some think, or upon principles of fitness and convenience established after the times of the Apostles by Ecclesiastical authority, as many concurring with Tertullian and Lightfoot believe ratified by secular law, it is manifest that the present repeal of this enactment, and the abrogation of the rule by the General Synod, would be an occasion of painful schisms or dissensions within the Church of Ireland and of dissatisfaction in kindred Churches.

Another important Act (5 Geo. IV., c. 91) deals with the subjects of the residence of the clergy and the compulsory appointment of curates by bishops, both matters of interest and importance to the welfare of the Church.

CHAPTER III.

CONSTITUTION OF CHURCH OF IRELAND.

The second part of the law of the Church consists of the enactments of the General Synod, by which the old laws and constitutions and ordinances of the Church have been altered or modified, and deficiencies in the old law, to meet the necessities of a Church disestablished and disendowed, have been supplied.

These enactments are contained in "the Constitution of the Church, 1889," and numerous other statutes.

The Constitution, after formal enacting words, and a preamble well deserving of perusal, contains fourteen chapters, viz.:—

Chapter I., which provides for the establishment of the General Synod, composed of the bishops and representatives of the clergy and the laity, and regulates the election of these representatives; it arranges the mode of procedure; a majority of clergy *or* laymen upon a vote by orders has a right of veto; special care is taken to guard against rash or hasty changes in the Prayer Book, by section 27, which declares that—

"No modification or alteration shall at any time hereafter be made in the articles, doctrines, rites, rubrics, or, save in so far as may have been rendered necessary by the passing of the 'Irish Church Act, 1869,' in the formularies of the Church, unless by a Bill duly passed, as hereinbefore provided. No Bill

for such purpose shall be introduced except on a Resolution passed in full Synod, at an Ordinary Meeting thereof, stating the nature of the proposed modification or alteration; and no such Bill or Resolution shall be deemed to have passed the House of Representatives except by majorities of not less than two-thirds of each Order of the said House present and voting on such Bill or Resolution: Provided that no Bill for such purpose shall be introduced until the Ordinary Meeting of the General Synod next after the passing of such Resolution, and copies of any such Resolution shall be transmitted by the Secretaries of the General Synod to the Secretaries of every Diocesan Synod within one month after the last day of the Session of the General Synod in which the same is passed."

The subjects of the other chapters in the Constitution are as follow, viz.—

Chapter II. Diocesan Synods.
" III. Parish and Parochial Organisation.
" IV. Appointment to Cures, and Subscription Assent to the Book of Common Prayer, Canonical obedience and Submission to the authority of the Church and to its laws and Tribunals.
" V. Cure of Souls in Parishes having no Parish Church, but in which there are Proprietary or other Non-Parochial Churches.
" VI. Archbishops and Bishops.
" VII. Cathedrals.
" VIII. Ecclesiastical Tribunals, Offences, Faculties, and Registries.
" IX. Constitution and Canons Ecclesiastical.
" X. Concerning the Representative Body of the Church.
" XI. The Boulter Fund.
" XII. Management of Burial Grounds.
" XIII. Management of Glebes, and Parochial Buildings
" XIV Provisions for Widows and Orphans.

The Synod also passed numerous statutes dealing with the revision of the Prayer Book and Formularies of the Church, and others which may be classed under the familiar title of the Local and Personal Acts.

There are two chapters of the Constitution of an especially legal and technical character, and these seem to require fuller discussion and explanation in detail, viz. Chapter VIII. and Chapter IX. The subjects of the former are the Ecclesiastical Tribunals of the Church, offences against its laws, their proper punishments, and lay discipline. The latter contains the Canons Ecclesiastical of the Church. The former will be found in the Appendix; the latter is published, by order of the Synod, with the Book of Common Prayer.

CHAPTER IV.

THE CHURCH STATUTE, ENTITLED, "ECCLESIASTICAL TRIBUNALS, OFFICERS, FACULTIES, AND REGISTRIES."

CHAPTER VIII. of the Constitution provides Ecclesiastical Tribunals for the Church in Ireland, namely, a Diocesan Court for each Diocese or united Diocese of the Church, thirteen in all, and a superior Court exercising original and appellate jurisdiction, named in the Statute the Court of the General Synod. The Diocesan Court is composed of the Bishop of the Diocese who presides with his assessor, called Chancellor, who must be a barrister of not less than ten years standing, and a jury composed of a clergyman and a layman, summoned to attend in rotation from a list of three of each order elected by the Synod of the Diocese. In certain cases the Chancellor, or a Commissary, may sit for the Bishop, and a Deputy Chancellor may be appointed by the Bishop. In this Court the Bishop is the sole judge, assisted as to law by advice of the Chancellor and as to the facts, by the jury of two.

This Diocesan Court has jurisdiction to hear all cases of offences of members of the Church against its laws, except cases touching doctrine or ritual, and of pronouncing all proper sentences except deprivation or deposition from Holy Orders—sentences which are reserved for the superior Court. The

decisions of the Diocesan Court are subject to an appeal to the Court of the General Synod.

The 7th and subsequent sections to 19 inclusive, are conversant with rules of procedure and evidence.

The Bishop, or any member of the Church who has signified in writing his submission to the authority of the General Synod, and who resides in the Diocese, or has been personally injured by the act complained of, may institute the proceedings which are to be commenced by a petition in a prescribed form. A provision is made to secure payment of costs by all petitioners except bishops; and it would seem that payment of costs, pursuant to an order of the tribunal, could be enforced in the temporal Courts by an action upon the mutual contract mentioned in the Church Act, s. 20, and, *a fortiori*, upon the written submission of clergy and laymen. Where a Bishop is the prosecutor, the Synod has provided for payment of his costs in proper cases out of a special trust fund (see page 35). Powers are given to this Court to deal with costs, and, in its discretion, to remit any case to the Court of the General Synod. The 20th section of Chapter VIII. contains a general provision that: "In all cases where the parties submit, or are bound by the laws of the Church, the Diocesan Court may hear and determine any questions connected with the property of the Church, or the administration thereof, or with ecclesiastical rights generally, which may arise between members of the Church of Ireland, if the party defendant be resident within the Diocese." Of course it is not to be understood that by this section it was intended to oust or interfere with the jurisdiction of the temporal Courts, or to assume for the Church

tribunals any coercive jurisdiction. But in another point of view a distinction may be taken. In the celebrated case of Dr. Warren (see *ante*, p. 11), a Wesleyan minister, who had been suspended by a tribunal called a District Committee, and had appealed to the Civil Court of Chancery, the Vice-Chancellor, in deciding against the appeal, said:—"Although this Court has jurisdiction over trusts, it cannot exercise any jurisdiction in the nature of an appellate jurisdiction over a local Court of a voluntary society who have agreed that certain affairs shall be managed in a certain manner by that local Court." And on an appeal, Lord Lyndhurst, C., affirmed the decision of the Civil Court that Dr. Warren should be suspended because he refused to appear before the tribunal of the Wesleyan Church. (The word 'Church' is used here in the sense of Article XIX.)

This statute, Chapter VIII., proceeds to arrange and regulate the constitution and functions of the Court of the General Synod. It is constituted of three bishops—first in order of precedence (see Meath Case, Appendix), able to attend, and of four laymen—lawyers with special qualifications standing first in order of a list of ten elected at the first session of every General Synod. This Court has cognizance of questions of doctrine and ritual. In ordinary cases the decision of the majority is the decision of the Court; but when a case involves a question of doctrine, or the deposition of a clergyman, the concurrence of at least two bishops is requisite in a judgment adverse to a clergyman. This Court cannot determine any question which in the opinion of the lay judges is more fit for a civil tribunal. An amending Act, 1895, provides that,

when the Representative Body is a party, the Court shall be constituted of three lay judges, not being members of the Body: *nemo possit esse simul actor et judex*, Co. Lit., 141. 1.

The Statute then regulates the practice of the Court, in sections 32 to 46 inclusive, section 42 declaring that it shall be the duty of members of the Church to attend trials and give evidence when summoned. A Rules Committee is constituted by section 50, and power is given to the Court to determine questions concerning the election of a bishop: see the case of Meath Episcopal Election, Journal of Synod, 1886, p. 169. The 48th section declares that:—"It shall be in the power of the House of Bishops, or of the General Synod, to refer to this Court any questions of a legal nature which have arisen, or which may arise, in the course of their proceedings; and the said Court shall thereupon proceed to hear and determine the same in the same manner as in the case of an appeal, or to advise the House of Bishops, or the General Synod, in respect of the same."

As to offences, the 52nd section declares:—"Every act which would have been a breach or violation of the Ecclesiastical Law of the United Church of England and Ireland, and an offence punishable by such law in Ireland, at the time of the passing of the 'Irish Church Act, 1869,' and which is a breach or violation of the Ecclesiastical Law of the Church of Ireland for the time being; and also all crimes for the time being punishable by law in Ireland, immorality, drunkenness, conduct unbecoming to the sacred calling of a clergyman, and all other acts which are breaches or violations of the Canons or other Laws of the Church of

Ireland for the time being, and the teaching or publishing of any doctrine contrary to the doctrines of the Church of Ireland, shall be offences against the Ecclesiastical Law of the Church of Ireland, cognizable by the Ecclesiastical Tribunals of the said Church." To this is added in section 59 :— "Disobedience to any sentence or order of any Ecclesiastical Tribunal shall constitute a distinct offence, on proof whereof such sentence may be pronounced as the Court shall think proper, including, in the case of the Court of the General Synod only, a sentence of deprivation."

A similar provision is contained in Canon 48.

It will therefore be always a primary consideration for an intending prosecutor and for the Court, whether the Act impeached is or is not an offence against the laws, and cognizable by the Church tribunals within the scope of these sections, which it is presumed must be construed strictly. If the act in question be such an offence, then *as a general rule* the Court will proceed to try the case, hearing the evidence, and adjudicating thereon.

It should be noticed that as regards evidence of offence, section 52 provides that the said tribunal shall be "at liberty to accept lawful proof of a conviction in any of the Queen's Temporal Courts for treason, felony, or misdemeanour, or of any finding, judgment, or order of any such Temporal Court in any criminal or civil proceeding establishing or founded upon the fact of any immoral act, immoral conduct, or immoral habit, as sufficient evidence of such crime or fact, provided such conviction, finding, judgment, or order shall not in the meantime have been reversed or set aside, and that more than two years shall not have elapsed."

The expression "as a general rule" has been used because it would seem that the comprehensive words in section 52, "all crimes for the time being punishable by law," *i. e.* by the Criminal Law of Ireland, require qualification. It could not have been intended to give the Church Tribunals concurrent jurisdiction in all criminal cases. Burns (vol. 2, 50) says, "there is not any maxim in the law better established than that the Ecclesiastical Court hath no cognisance and jurisdiction in cases of treason or felony." In Nash *v.* Nash (1 Cons., R. 141) Sir William Scott said, "certainly this Court cannot inquire into a felony *directly*, even when the clergyman is sued for the purpose of deprivation."

An instructive judgment on this subject by Sir W. Wynn is to be found in Harris *v.* Butler (1 Cons., R. 663), from which it appears that where an act is the subject of indictment at Common Law direct proceedings in the Ecclesiastical Court will be restrained by prohibition. There is a statute (4 James I., c. 5) against drunkenness, and in it is contained an express saving of concurrent ecclesiastical jurisdiction. See also Searle's Case (Hobart, 288). And, accordingly, in the modern case of A *v.* B, Clk. (11 Prob. D. 56), Lord Penzance refused to issue letters of request and a citation against a clergyman charged with sodomy. He said the issue of such a citation must be subject to the condition that the charge is one which is properly made in this (Ecclesiastical) Court, and triable without previous conviction in a Court of criminal jurisdiction.

All this is consistent with what is also settled law, viz. that after conviction for felony, or any other Common Law or statutory crime, proceedings may be taken upon the conviction, and therefore

indirectly for the crime itself in the Church Tribunals (Hobart, 121).

The cases just referred to related to the jurisdiction of the Ecclesiastical Courts of an Established Church. It cannot, however, be doubted that the principle of prohibition applies, *a fortiori*, to the tribunals of a voluntary institution; but the provision that the Court of the General Synod shall not determine any question which in the opinion of the lay judges is more fit for a civil tribunal is, probably, an adequate safeguard against any conflict of jurisdictions.

When the offence charged against the clergyman is of a purely ecclesiastical character, such as teaching false doctrine, depraving the Prayer Book, violation of the law of the Church as to ritual, non-residence or other neglect of duty, and matters not within the scope of the Criminal Law of Ireland, then, doubtless, the case is one for the direct and exclusive cognisance of the Church Courts, and the offence may be the subject of direct complaint and punishment therefor.

But as we have seen, generally speaking in case of crimes, the first investigation ought to be made in the Criminal Court, and, then, after a conviction there, proceedings should be taken in the Church Tribunal not founded directly upon the crime, but upon the conviction (which is conclusive), and for the scandal and injury resulting to the Church from the conviction.

Borough *v.* Collins (15 Prob. Div. 81, Court of Arches) was a suit against a clergyman, and the articles alleged that he had been convicted before justices of having been drunk and rioting in a public place, and prayed that he might be punished for the

scandal caused thereby. The respondent pleaded as a defence a denial that he had been drunk or riotous or that scandal had been caused by his conviction. The Court decided that the defence was bad and could not be admitted. Lord Penzance gave a considered judgment:—"Has this Court the power, and if the power, then, certainly, the duty, to suspend or deprive a clergyman by reason of the scandal resulting from his conviction for such an offence as drunkenness in public? It is obvious that such a conviction must degrade him in the eyes of his parishioners and seriously impair the efficacy of his spiritual advice," etc. If a clergyman should be convicted of an indictable offence by a Criminal Court a power must exist somewhere of removing him altogether from his spiritual functions, or of withdrawing him from them for a time; and similar reasoning applies, though in a less degree, perhaps, to a conviction for drunkenness. If a power of this kind resides anywhere it must reside, I think, in this Court, and be exercised in the familiar forms of suspension and deprivation. The case of Burder (3 Curtis, 882) is a direct authority in point. In Burder's Case it was held that the Ecclesiastical Tribunal had jurisdiction over Clerks in Holy Orders for the purposes of suspension and deprivation. Although, to a certain extent, that may be punishment, still punishment is "not the object of the proceeding. The object is to remove the party from the office in which he has misconducted himself." In such cases scandal is the evil to be extinguished by the prosecution—scandal arising from evil report based on the immoral conduct of the respondent, as in Burder's Case; scandal arising from a conviction of crime by a competent tribunal,

as in Borough *v.* Collins ; for, as Lord Penzance says, the principle is the same in both cases.

In Burder's Case a previous conviction was not alleged, nor was it averred in the case of Ross *v.* M. D., Clk. (see Appendix C), in the Court of the General Synod, January, 1894. The case was heard on letters of request from the Diocesan Court of Down, and the evidence and findings of fact transmitted therewith. The Judges were the Primate, the Archbishop of Dublin, the Bishop of Clogher, Dr. Ball, Mr. Justice Harrison, Mr. Justice Holmes, and Mr. Justice Gibson. The respondent did not appear. The sentence was as follows:—

"The Court doth determine and adjudge upon the evidence and findings aforesaid that the Rev. M. D. committed the following offences:—

"1. That he was drunk on a Sunday in October, 1892, and also on divers other occasions within the last two years within the parish of D.

"2. That he used indecent language in public in October, 1892, and on divers other occasions within the last two years, all at places within the said parish.

"3. That he neglected the celebration in his Church of Divine Service on two Sundays within the last two years.

"And the Court doth further determine and adjudge that the said offences are offences against the Ecclesiastical Law of the Church of Ireland, cognisable by the Ecclesiastical Tribunals of said Church, and that the same are wilful violations of the Canons of the said Church, and conduct unbecoming a clergyman of the said Church, and *causing scandal* and of evil example to the people, and doth pronounce and decree that, as a punishment for the

said offences numbered 1 and 2, the respondent be and is hereby deprived of his office and benefice as Incumbent of the said parish, and of all the emoluments, benefit, and advantage appertaining thereto or connected therewith." The respondent submitted to this order, and resigned his benefice, and, therefore, it was not necessary to resort to any Civil Court in aid of the order of the Court of the Church of Ireland.

A similar sentence was pronounced in the case of the Bishop of Rochester *v.* Harris (1893, Pro., 137-144) in England.

Section 55 provides that when an accused person shall have been adjudged guilty of an offence cognisable by the Court, the Court shall proceed to pass sentence. What sentence? What punishments can the tribunal appoint? Section 52 enacts generally that "it shall be lawful for the tribunals to award the same or similar punishments for such offences as under the laws in force at the passing of the Irish Church Act the Ecclesiastical Courts were competent to decree in respect of the same or similar offences, or such other punishments as are or shall be provided or appointed by the Laws of the Church of Ireland for the time being."

Sections 56 and 57 provide that:—"The Diocesan Court shall have power to pronounce sentence of admonition or of suspension, *ab officio* or *a beneficio*, but not of deprivation or of deposition from Holy Orders, and shall have power to inhibit any person charged from the exercise of his office *pendente lite*, or pending any appeal, and the Court of the General Synod shall have power to pronounce sentence of deprivation or of deposition from Holy Orders."

Sections 58 and 60 enact that all the tribunals shall have power to order that a suspended clergyman shall not reside in the glebe house, or retain possession of the glebe lands during suspension, and that he shall deliver up all books, keys, and other property held by him, in virtue of his office, to the Churchwardens, or to such other person or persons as the order may appoint to hold such property for or on behalf of the Representative Church Body, and that any moneys payable as stipend to such clergyman shall be sequestered. So far we have spoken of the clergy, but laymen are also subject to the laws of the Church and the jurisdiction of its tribunals; and section 64 provides for the removal from office, such as membership of the Representative Body, Church Committees, Church Synods, the position of Churchwarden or Vestryman, Chorister, Clerk or Sexton, etc., any person who shall have been convicted and sentenced for any crime, or fled from justice, or refused to give evidence before the Courts. This matter is also a subject of the 48th Canon, to be hereafter considered.

This Chapter as to Ecclesiastical Tribunals contains a provision for rehearing cases decided in the Court of the General Synod (section 61).

A great variety of punishments fall within the terms of the 52nd section. Some may be mentioned for illustration:—Sequestration, monition, deprivation, degradation, removal from office, expulsion from a glebe house, delivery up of keys, books, and other property, held *virtute officii;* stoppage of payment of stipend out of Church funds, inhibition from exercise of office, etc., etc. Some of these punishments directly involve coercive

powers, such as sequestration. The Act 27 & 28 Vict., c. 54, has been repealed, and no such writ can be issued by the Church Tribunals. Others, such as monition, degradation, removal from office, and stoppage of stipend, do not necessarily involve coercive powers; while others, such as deprivation, removal from glebe, surrender of Church property, can only be effected by the aid of the Civil Courts, which will enforce the sentence of the Church Tribunals on the same principles and in the same manner in which the awards of arbitrators are enforced. After a sentence of deprivation an action of ejectment might be brought for the glebe by the Representative Body, and the sentence of the Church Tribunal would be an answer to any equitable defence by the clergyman. So also a sentence of deprivation would be a defence to any proceeding by a clergyman for payment by the Representative Body or any Church Trustee of the income of a private endowment, or of a commuted annuity in cases not within the proviso at the end of section 20 of the Irish Church Act, and an order for delivering up of property might be enforced by a mandatory injunction issued by a Civil Court. A matter which occasionally arises may be taken as an illustration. A clergyman holding an annuity under the Irish Church Act does not perform his clerical duties under such circumstances as protect him from forfeiture: Is he liable, and can he be compelled, to provide a stipend for a curate to supply his deficiency? The unrepealed Act, 5 Geo. IV., c. 91, section 49, provides that whenever a clergyman does not discharge his duty as incumbent of a parish (whether from negligence, *or bodily or mental infirmity*, *or any other cause*, is not material) the

Bishop shall have power to appoint a curate and fix a salary to be paid out of the incumbent's clerical income. The coercive proceeding to enforce this, viz. sequestration, has been taken away from the Church; but the Bishop is not helpless, for proceedings may be taken against the Incumbent in the Civil Court to enforce the mutual contract to observe this law of the Church. The subject was considered in Graves's Case, reported in Bernard, 155, where Sir Edward Sullivan, M. R., said :—"If Graves was bound by the Ecclesiastical Law to pay a curate, it is strange to me if he cannot be compelled in the Temporal Court to pay a curate." Lawson, J., concurred in this judgment.

The case of Grant *v.* Smith (Appendix C) and others affords an occasion for further illustrations. The petitioner complained of the erection of a cross placed in a church behind the Communion table. The respondents were the incumbent, curate, and officers of the parish. The Court of the General Synod declared that the cross in this position was a violation of the constitutions and canons of the Church. The Court did not order the removal of the cross, probably upon the supposition that the respondents would submit to the decision of the supreme authority of their Church.

But suppose that the Court had directed the removal of the cross. Well, the Court had no coercive power to remove it. Would the decision of the Court, therefore, be an unreal mockery? Not so; under Chapter VIII., sec. 59, canon 48, disobedience to the Order would have been an offence punishable as regards the clergymen and laymen respondents by deprivation, and Dr. Warren's case

is an authority that this sentence would be enforced by the coercive jurisdiction of the Civil Courts. The result of the judgment was that the respondents did remove the cross from behind the table, and placed it in another position which, however unbecoming and uncatholic it may be, is not obnoxious to any doctrine or law of the Church of Ireland.

As to the punishment of deprivation, there are two sorts, viz. *a beneficio* and *ab officio*. The first sort is when a minister is deprived of his living or other profit of his ministry. The second is when a minister is deprived of his Holy Orders, and this sort is also called deposition and degradation. A minister may be deprived of his living without deposition, but deposition necessarily involves deprivation of the living.

There is no doubt of the jurisdiction of the Tribunals of the Church of Ireland to pronounce a sentence of deprivation, whether of deprivation simple or of deposition in cases in which the Tribunal has jurisdiction to try the alleged offence; and this punishment is authorised by the laws of the Church for the offence. In every case, however, which involves the deposition of a clergyman the concurrence of two of the bishops sitting as Judges of the Court of the General Synod is required. In the Statutes of the Church the words "deposition" and "deprivation" are both used, the latter, as it would seem, always in the sense *a beneficio*.

What are the offences for which the Church Tribunals can try clergymen and pronounce a sentence of deprivation? In two cases the Church Statutes expressly declare that the sentence of

deprivation may be pronounced, and in both the jurisdiction of the tribunals is clear; one is disobedience to any sentence or order of any Ecclesiastical Court (Chap. VIII. sect. 59); the second is the case of any person holding any office in the Church who shall wilfully contemn, neglect, or violate any of the Canons, and shall have been more than once duly convicted of such misconduct (Canon 48). As to other offences in which these tribunals have jurisdiction to try and pronounce deprivation, the inquiry is, What were the cases under the laws in force at the time of passing the Irish Church Act, in which the Ecclesiastical Courts then existing, including the Ecclesiastical Laws of England before the Union (and not since repealed), were competent to decree deprivation?

Burns mentions numerous offences for which the Ecclesiastical Courts could deprive a minister; amongst others are simony, conviction of treason, murder, felony or perjury, infidelity, incontinence, drunkenness, disobedience to the orders and constitutions made for the government of the Church (citing Cro. Jac. 37), non-residence, speaking or preaching in derogation of the Book of Common Prayer or any other rite or ceremony, and that independently of statute (see Cawdrey's Case, 5 Co. 59, and Candlish's Case, Godbolt, 163), advisedly and wilfully maintaining any doctrine contrary to the Thirty-nine Articles, and when convicted before the Bishop, *i.e.* in the Diocesan Court, persisting therein (see Stone's Case, 1 Cons. R., 424). Further information may be found in Phillimore's "Ecclesiastical Law," vol. ii., 1395, in "Stephens' Laws of the Clergy," vol. i. 428, where the writer gives the form of execution in olden time of a sentence of

deposition. Cripp's "Law of the Church and Clergy," 558, may be also consulted.

The Fifth Article of the Union must not be forgotten, and its effect in extending to Ireland the then existing ecclesiastical law of England, as decided in the case of Campbell *v.* Hunt.

On the subject of costs in the Church Tribunals the General Synod in 1894 resolved:—

"In cases of charges, not involving doctrine or ritual, preferred under Chapter VIII. of the Constitution, in which the petitioner shall be the Archbishop or Bishop, the Standing Committee are hereby authorized, if they shall so think fit, to make provision by drawing on the Representative Church Body, against the General Purposes Fund, for the costs, in whole or in part, of the proceeding in the Ecclesiastical Tribunals, or of any other legal proceedings consequent thereon. The Standing Committee to be at liberty to make Rules and Regulations in reference hereto."

In pursuance of this resolution the following rules were made by the Standing Committee, and adopted by the General Synod in 1895. viz.:—

"1. Applications under Resolution of 7th April, 1894, for payment of costs on account, may be made either before proceedings commenced, or at any time during the course of proceedings, or may be made after definitive sentence for payment of the costs, in whole or in part, of such proceedings.

"2. Such applications shall be made in writing, signed by the Archbishop or Bishop, and accompanied by a statement, and a certificate of the solicitor, if any be employed, of the charges, and of the grounds on which they are made, and such

further documentary evidence as the Standing Committee may require.

"3. Previous to payment of any Bill of Costs in full the Standing Committee shall require such Bill to be taxed, or to be moderated and certified by a member or members of the Legal Committee.

"4. All such applications shall be lodged with the Secretary of the Standing Committee one clear fortnight before any stated meeting of the Committee, and due notice thereof shall be given on the Agenda Paper."

CHAPTER V.

CANONS OF THE CHURCH.

The second Church Statute, which is specially conversant with law, is Chapter IX., entitled "Constitutions and Canons Ecclesiastical." (By order of Synod, printed in the Book of Common Prayer.) These Canons, with the exception of the disciplinary Canons (Nos. 49 to 54 inclusive), were enacted by a Statute of the General Synod in 1871, and again enacted (with the special procedure required for changes in Rubrics, &c., by Chap. I., sect. 27), and including the disciplinary Canons, in 1877, and again re-enacted in 1889. Such a Statute may be regarded as solemn and serious, and to treat or speak of these Canons or any of them as "obsolete, not to be taken seriously," is foolish, and does not become members of the Church.

The general sanction of the Canons is to be found in Canon 48, where we read:—"The General Synod doth decree that if *any* person holding any office in this Church shall wilfully contemn, neglect, or violate any of the Canons thereof, and shall have been duly convicted, he shall for the first offence be admonished or suspended, and for a subsequent offence admonished, suspended, or deprived of his office according to the extent and nature of the offence, with or without costs." Note the universal

character of this clause; it applies to every member of the Church, from a Lord Primate to a member of a select vestry, and observe the grave character of the punishments authorised up to deprivation. The question whether the old Canons were binding upon the clergy only, and not upon the laity, is only of academic interest; for the new Canons, substituted for the old, are expressly binding, as we have seen on all members of the Church (1 Cons. Rep. 20). All former canons are repealed, as Canons. It does not follow that every practical rule or custom of the Established Church, albeit founded upon an old Canon, is now of no weight or obligation in cases where the rule is not inconsistent with some new Canon.

Canons 1 and 2, direct that the forms of Divine Service prescribed in the Book of Common Prayer and *Administration of the Sacraments*, and of consecrating and *ordaining* Bishops, Priests, and Deacons, *and no other* shall be used.

It is notorious that in the Church of England there are ministers who in the administration of the Bread and Wine use to each communicant the first clause only of the appointed words. To this practice Dr. Davidson, Bishop of Rochester, adverts in his charge (October, 1894, page 76), and observes that in so doing the Minister is "not merely disobeying the letter of the Prayer Book, but is disregarding one of the most significant and important portions of its history." The Church Catechism, in which, as the Bishop well says, we have the best compendium in Christendom of our Divine Master's teaching, declares that this Sacrament was ordained "by Christ in His Church" "for the continual *remembrance* of the sacrifice of the death of Christ and of the benefits which

we receive thereby, and the same doctrine is reiterated in the Prayer of Consecration. Surely such conduct is contumely of the Church and the Prayer Book, and still more shocking is contempt of the words of the High Priest used in his act of institution. Against such misconduct these Canons afford all the protection law could give. This is emphasised in the fourth Canon: "All Ministers shall use and observe the orders rites and ceremonies prescribed by the Book of Common Prayer in administration of the Sacraments, without either *diminishing* or adding anything in the matter or form thereof, save as hereinafter provided."

Canon 4 may be termed the Ornaments Rubric of the Church of Ireland. Its effect has been a simplicity and uniformity of clerical costume, contrasting favourably with the schisms and litigation on the subject of vestments which have distracted the Church of England. Schism is used in this Paper, as by St. Paul and the Church of Ireland, in the sense of "dissension" not "separation." In Ireland the white surplice is now worn by all ministers during the *whole* of Divine Service, and the old-fashioned ritualistic change of costume before and after the sermon has been discontinued (on surplices cut short, see Dean Stanley's "Institutes," 166).

Canon 5 is, Of the ordering of Divine Service: "Every Minister, at all times of his public ministration of the Services of the Church, shall speak in a distinct and audible voice, and so place himself that the people may conveniently hearken unto what is said, and in no case, when he is offering up Public Prayer, shall his back be turned to the congregation. And every Minister when saying the Prayer of Consecration in the Service prescribed for the

administration of the Lord's Supper shall stand at the north side of the table, &c."

In the interpretation of Statutes it is an elementary principle (Heydon's Case, 3 Rep. 7) that regard is to be had to the evils intended to be removed. Now the evils contemplated by this enactment were the mumbling of prayers by the Minister in an indistinct or inaudible voice, and the turning of the Minister's back to the people, especially at the Lord's Supper. One chief object of public worship is, that the people and the Minister may unite in that worship, which cannot be unless the people hear him who speaks. Why is the use of the Latin language in public worship prohibited? Is not the simple rule of the Church of Ireland better than the modern law of the Church of England which permits the backward position, provided that the Minister takes care, is intelligently careful, that the manual acts can be seen by the communicants (Read *v.* Lincoln, Prob. 1891–9.) A Rubric of the Church of Ireland directs the Minister to say the order in a distinct and audible voice.

This Canon forbids the use of any hymn or prayer in any public office unless prescribed in the office or permitted by the ordinary or other lawful authority of the Church. This excludes the use of hymn books, with the exception of the Church Hymnal sanctioned by the General Synod, unless specially permitted by the ordinary upon whom the responsibility is cast. The Canon proceeds:—"No Minister *or other person* during the time of Divine Service shall make the sign of the Cross, save where prescribed in the Rubric, nor shall he *bow, or do any other act of obeisance to the Lord's Table*, or anything there or thereon; nor shall any bell be rung during

the time of Divine Service. It shall be competent for the ordinary to restrain and prohibit in the conduct of Public Worship any practice not enjoined in the Book of Common Prayer, or in any Rubric or Canon enacted by lawful authority of the Church of Ireland" (Read *v.* Lincoln. 1891 Prob. 85).

The law applies to Ministers and laymen, to men and women. For such forbidden crossings, for such unlawful bows and courtesies, women as well as lay members of the Church, are liable to be summoned under Canon 48 before a Diocesan Court, and, if convicted, censured with costs, and for a second offence deprived of any office he or she may hold in the Church.

Canon 9 enacts that no Minister shall refuse to Christen any child either of whose parents is resident within his cure, or to bury any person who may have died within his cure, or whose family may possess a burial place within the Church or Churchyard. The law of burial will be considered in Chap. VII. of this Essay. The 11th Canon relates to marriage, a subject to be discussed in Chap. VIII. The 12th Canon says that Sponsors in Baptism must be persons of discreet age and members of the Church of Ireland, or of a Church in communion therewith. The 16th Canon, 1634 (1711) is repealed; therefore parents according to the present law of the Church may be admitted as Sponsors.

The subjects of Canons 26, 27, 28, and 29 are the Residence of those to whom the cure of souls is committed, and the compulsory appointment of curates. Canon 26 states that according to the order and practice of the best times it is ordained that all to whom the cure of souls is committed shall reside as near as may be to their cures—that

is to say, in the house of residence, if there be one, etc. The importance of residence is well put by Dr. Davidson, Bishop of Rochester, when he says (charge, 1894), a "distinctive characteristic of our National Church is the obligatory residence of her clergy *in the place, whatever it may be, where by night and day* they are most wanted." This suggests the propriety and duty of providing houses of residence for all incumbents, whether in town or country, on sites as near as possible to their churches, and the central or most thickly populated districts of their parishes. Parishes are not created for Ministers, but Ministers for parishes. The coercive power given to Bishops, by Canon 28, of appointing and providing for the stipends of curates, when the duties of a cure are not adequately performed, must be read in connection with the elaborate provision of the Imperial Statute 9 Geo. 4, c. 91, which, in section 49, enacts that whenever it shall appear to the satisfaction of any Bishop that by reason of the distance of the residence of the spiritual person serving the same from such Churches, or the negligence, or mental or bodily infirmity, of the spiritual persons holding the same, that the ecclesiastical duties of such benefice are inadequately performed, such Bishop may, by writing under his hand, require the spiritual person to nominate a fit person with sufficient stipend to be licensed by him to perform or assist in performing such duties, and in default of such nomination for three months, it shall be lawful for such Bishop to appoint a curate with such stipend as such Bishop shall think fit, not exceeding, &c.; and an appeal is given from the Bishop to the Archbishop. This is the Ecclesiastical Law of the Church of Ireland, binding as by con-

tract upon the clergy, and capable of being enforced, if necessary, in Civil Courts.

The Canons 34, 35, and 36 contain regulations as to the Communion Table. It must be a *movable table of wood*—"an honest table." There shall not be lights on the table, except where necessary for the purpose of giving light, and crosses upon the table or wall, or other structure behind the table are prohibited. The intention of these Canons was of course to recognise the doctrine of the Church of Ireland, and indeed of the Church of England, and other reformed Churches, that altars have no place in the visible Churches of Christ. This doctrine of the Reformation is clearly brought out by a comparison of the old Mass-books and the first Prayer Book of Edward VI. with his second Prayer Book and the present books of the Churches of Ireland and England. The intention of the law-makers was to prohibit everything tending to change the character of the Supper Table into a Sacrificial Altar; and the tribunals of the Church will interpret these Canons according to the words thereof, and if any case should arise in which the sense of the words may seem ambiguous, then, according to the intention to be gathered from the historical comparison to which I have alluded. There is nothing novel in the principle, or indeed in the details, of these Canons. The principle was established in Liddell *v.* Westerton (Freemantle, R. 117). The table must be a table of wood and movable, and not stone or immovable, as decided in Faulkner *v.* Litchfield (1 Robertson, 1874), the celebrated stone altar case. A Canon passed in Dublin in 1186, in opposition to an innovating Anglo-Norman Archbishop, enacted that the

Eucharist shall continue to be offered on *wooden tables in accordance* with the usual custom of the Church of Ireland. As to lights on the table, Canon 35 follows the case of Martin *v.* Mackonchie (2 P. C. 365, and 4 Ad. and En. 279), one of great authority, and other cases which declared that such lights were unlawful; and this seems to be still the law in England, for, although in Read *v.* Bishop of Lincoln (1891, P. 9), the Archbishop of Canterbury did not follow this decision, the Court of Appeal (1892, App. 644), while affirming the decision of the Archbishop, did so, not upon the ground that they overruled Martin *v.* Mackonchie, or considered the lights in question were lawful, but expressly upon the ground that the Bishop was not personally responsible for their introduction, and that the mere fact of his not having objected to their introduction by another person was not an ecclesiastical offence on his part. The inference is that the Privy Council did not disapprove of the decision in Martin *v.* Mackonchie, that it is unlawful for a Minister in England to place lighted candles on the table when not required for light. Of course no question can be raised in the Church of Ireland, having regard to the plain words of the Canon passed by the General Synod, but it is satisfactory to understand that the Canon merely ratified the antecedent law of the Church.

Canon 36 relates to crosses upon or behind the communion table. It would seem that in England it is not lawful to place a cross on the table, or in contact or connexion with it, when it is so placed not as an ornament of the church, but with a tendency to give the table the character of an altar: compare Durst *v.* Masters (1 Prob. D. 123–173,

Moore, Special Report, 14 Moore, P. C. C. 1) with Liddell *v.* Westerton. In Durst *v.* Masters the Court decided that a cross, not on the table, not in contact with the table, not physically connected with the table, but placed behind it on a structure, viz. a wooden ledge, called a retable, was forbidden by law. The construction of Canon 36 was fully considered in the case of Grant *v.* Smith, heard in the Court of the General Synod in 1892 (Appendix C.), and explained in the judgment of Mr. Justice Holmes.

Canons 38 and 39 prohibit the use of incense, and regulate processions.

The 37th Canon gives directions upon the subject of the administration of the Lord's Supper, pointed against certain Ritualistic practices so called. The observance of the directions as to the elevation of the paten and cup may no doubt be evaded; and undoubtedly much must be left to the honesty, good sense, and loyalty of Ministers. Precise definition would seem to be impracticable. Many laws of the Church depend for their profitable use on the honour of her parochial Ministers, and the good sense and firmness of ordinaries.

The 40th Canon treats of the Ornaments of the Church:—"No change shall be made in the structure, ornaments, or monuments of any church (whether by introduction, alteration, or removal) unless with the consent of the Incumbent and Select Vestry, and until an accurate description or design of the proposed change shall have been approved of by the Bishop or Ordinary: Provided always that any person aggrieved by such proposed change, or by the refusal of the Ordinary, Incumbent, or the Select Vestry, shall have a right to appeal to the

Diocesan Court, which Court shall have full authority to hear and determine such appeal; and an appeal from said Court shall in all cases lie to the Court of the General Synod."

It appears from the judgment of Mr. Justice Holmes in Grant *v.* Smith, that there was a difference of opinion between the members of the Court on the question whether a faculty was necessary as a condition precedent to making any change in the structure, ornaments, or monuments of a church. Mr. Justice Holmes says:—"There seems to be abundant authority that before the passing of the Irish Church Act, 1869, no such change could be made except under a faculty." Chapter VIII., s. 53, of the Constitution enacts that bishops shall have and use the same powers of granting faculties, &c., which they had when the Church Act passed; and provision is made for appealing against the granting or withholding a faculty, to the Church tribunals. If this enactment stood alone it could hardly be disputed that a faculty is still required in all cases in which it was necessary before the Church was disestablished. But this 40th Canon provides that "no change shall be made in the structure, ornaments, or monuments of any church (whether by introduction, alteration, or removal), unless with the consent of the Incumbent and Select Vestry, and until an accurate description or design of the proposed change shall have been approved of by the Bishop or Ordinary." Then there follows a right of appeal against either the proposed change, or a refusal of any of the necessary consents, similar to that given against the granting or withholding of a faculty. Can it be said that the procedure thus laid down is merely supplemental to a faculty?

or is it substituted for a faculty in the cases to which the Canon refers? A faculty is nothing more than a licence given by the bishop, which does not differ in substance, and hardly in form, from his written approval. The conditions imposed by the 40th Canon are more stringent than those required before granting a faculty, except as regards citation or notice; and even in that respect it is probable that the best mode of ensuring publicity is to require the consent of the Select Vestry, as provided by the Canon. On the other hand, the rules of procedure which the General Synod has enacted in reference to faculties appear to apply to cases where changes are to be made in the structure or internal fittings of a church; and the more the subject is considered, the more difficult it is to reconcile the apparently conflicting legislation. Under these circumstances, it is not a matter of surprise that the members of the Court differ in opinion; and while the majority, consisting of the three ecclesiastical members, Mr. Justice Murphy, and Mr. Justice Holmes, hold that where the provisions of the 40th Canon have been followed, no faculty is required, Mr. Justice Monroe and Mr. Justice Gibson are of opinion that those provisions are in addition to, and not in substitution for, what the law of the Church had required before the enactment. This matter does not seem to be of great importance, inasmuch as a right of appeal is given by the Canon to every person, including every parishioner, aggrieved by the proposed change. Figures are sometimes placed as ornaments in a church. In a recent English case the Judge said:—"The test which governs the legality, or otherwise, of figures in churches is, whether they are free or not from the risk of being

abused by becoming the objects of adoration or superstitious reverence." (Case of Vicar of St. John's, 1895, P. 181.)

Unfortunately a further difference of opinion upon the construction of Canon 40 appears from the judgment in Grant *v.* Smith. Mr. Justice Holmes says there is no doubt that in this case the consent of the Incumbent and Select Vestry was obtained; and that after a description had been given in *conversation* to the Archbishop, followed by an actual inspection by him, he gave his *oral* approval to the cross being retained in the position in which he saw it. The ecclesiastical members of the Court consider this sufficient; the lay members have come to a different conclusion. They think the words "accurate description or design of the proposed change," must mean some writing, drawing, delineation, or model, capable of being preserved and subsequently referred to. Suppose a mistake or failure of memory, or an appeal without anything on record upon which, or in reference to which, the appeal is taken. This is a more serious matter, having regard to the grave inconvenience likely to result from time to time from the Canon, if the interpretation of the bishops be correct, an inconvenience which could not arise in the case of a faculty. It is possible that the important subject of faculties may hereafter engage the attention of the General Synod of the Church, and if so, it may be proper that the expenses of faculties should be considered and reduced.

The 48th Canon is entitled, "The Authority of the General Synod established," and is quoted at page 37.

Canons 49 to 54 regulate the admission and

rejection of persons coming to the Lord's Table. The Rubrics prefixed to the order of administration of the Lord's Supper are not expressly repealed, and the Rubrics and Canons must be read together; the latter will prevail when any inconsistency exists. These Canons bind all members of the Church; and when a minister in pursuance of the provisions thereof shall not receive a member of the Church as a communicant the member may appeal in the manner provided by Canons 50 and 51, but he cannot maintain an action against the minister in the Civil Courts. The Civil Courts have no jurisdiction by way of appeal from the regular sentences of the Church Tribunals pronounced in a controversy between members of the Church (Dr. Warren's Case, *ubi supra*). As regards persons not members of the Church of Ireland, it does not appear that they can complain of refusal of the Sacrament in a Church with which they are not connected. They cannot proceed in the Church Courts because they are not members of the Church or subject to the authority of the General Synod, nor in any Civil Court. Comyn says that an action on the case will not lie; and albeit the case of Clovell *v.* Cardinal (1 Sid 34) was not an actual decision on the point, still the authority of Comyn is sustained by the fact that there is no reported case in the Civil Courts in which such an action has been successfully maintained. It is true that the English Statute, 1 Edw. VI., c. 1, s. 8, was extended by the Act of Union to Ireland, but it is subject to the modification contained in the clauses and rubrics enacted by the General Synod. An interesting discussion on the general subject will be found in Jenkins *v.* Cooke (1 P. D. 80), where a parson was

condemned and admonished for his refusal to deliver the elements to a *parishioner* who had denied the personality of Satan, but was not "an open and notorious evil liver." The words of the Act 1 Edw. VI., are:—"The minister shall not *without lawful cawse* denye the hollie Sacraments" (1 Stat. Revised Ed., 530).

These Canons, called disciplinary, and the Rubrics to the Order of the Lord's Supper, constitute the existing discipline of the Church. The forms of absolution prescribed or recognised by the Church of Ireland are not matters of disciplinary authority exercised upon members of the Church, and the Canons as the foundation of an existing discipline of the Church are important, for it is not to be forgotten that in the second homily for Whit Sunday, *discipline* with sound doctrine and the Sacraments duly administered are given as *the three marks of a true Church*; and to the same effect are the "Catechism" of Edward VI., 1553; Noel's "Catechism," and Ridley's "Definition," quoted in "Browne on the XXXIX. Articles," p. 134. The First Rubric directs intending communicants to give notice to the curate. The neglect to give such notice does not authorise the Minister to repel the communicant (Stewart *v.* Crommelin, see report published by Hodges and Smith, 1852; "Stopford's Handbook").

CHAPTER VI.

CONSTITUTION OF THE REPRESENTATIVE BODY.

THE title of the 10th Chapter of the Constitution is:—"The Representative Body of the Church of Ireland."

This Body, in pursuance of the Irish Church Act, 1869, sect. 22, was constituted and incorporated by Royal Charter, dated 19th October, 1870, under the name of the Representative Church Body, to represent the Church of Ireland, and to hold property for any of the uses or purposes thereof, and to hold lands to the extent provided in the Act (see copy of Charter, "Journal of Convention," page 69).

The constitution and powers of the Body are to be found in the Charter and in this 10th Chapter of the Constitution. The first ten sections of this Statute relate to the constitution and election of the Body; the 12th and 13th sections to its powers of investment; the 14th section to powers of leasing and selling lands and houses; the 16th section declares that the Representative Body shall possess and may exercise such of the powers vested in the General Synod as shall be by the General Synod from time to time committed to it; and the 11th section provides that the Body shall hold all property which

shall become vested in it in trust for such objects and purposes, and in such manner, so far as lawfully may be, as the General Convention may have directed, or as the General Synod may have directed or shall ordain and direct, and shall be subject to the order and control of the General Synod in all matters not provided for by the laws of the realm. The effect of the qualifying words, "so far as lawfully may be," is a recognition of the superior obligations of the Civil Law, and specially the Law of Trusts and Contracts, to any inconsistent directions the Synod might give; and as trusts and contracts are matters of civil right and jurisdiction, it follows that any question of inconsistency should be referred for solution and decision to the Civil Tribunals of the land. This subject was considered by the Legal Committee of the Representative Body in 1886. The Right Hon. Dr. Ball, Mr. Pilkington, Q. C., Sir Andrew Hart, and the writer were present, and their opinion was as follows:—

"The Representative Body hold the property vested in them upon the special trusts declared by private donors and the general trusts of the Irish Church Act. Subject to these trusts, it is the duty of the Representative Body to administer their property as the Synod shall direct. Their position is that of trustees, not bankers, and their first obligation is to be satisfied that any particular administration of the trust property is consistent with the special or general trusts affecting the property, and the second obligation is to carry out the orders of the Synod when consistent with these trusts. It is their duty, as of other trustees, to act upon their own responsibility and that of their legal advisers whenever a question arises whether any proposed

disposition is agreeable to, or inconsistent with, their trusts. They cannot shift their responsibility upon the Synod or any of its committees. If the Representative Body violates its duty by doing what it ought not to do, or by refusing to carry out lawful directions, the remedy for their misconduct is to be found in the *Civil Courts*."

This subject, with special reference to the action of the Body and the Tribunal competent to decide such questions, was discussed at some length in a pamphlet published by the present writer in 1892, entitled:—"The Representative Body: its Property, Power, Duties, and Conduct."

The limited extent to which the Representative Body were empowered to hold lands under the Irish Church Act, 1869, and its Charter were extended by the Imperial Statute 38 and 39 Vict. ch. 42. Section 2 provides "That it shall be lawful for the Representative Body to invest all moneys vested in them for that purpose in the absolute purchase or in procuring leases or fee-farm grants, the lands so to be purchased not to exceed thirty acres for each glebe." And section 3:—"It shall be lawful for the trustees of any real property held in trust for the said Church or any congregation in connexion therewith, or any person or persons in whom the same may be vested, to grant to the said Representative Body, with their concurrence, such real property, to be held upon such trusts and subject to such rights as at the time of such grant affected the same respectively, and the former trustees shall be thereupon released from the trusts thereof respec tively." And section 4:—"It shall be lawful for any person entitled so to do to grant or devise any hereditaments to the said Representative Body

for any church, glebe building, or schoolhouse in connection with any congregation or church, provided always that not more than thirty acres shall be held in trust for any congregation." Under the 3rd section: A benefactor may grant or devise lands to trustees, diocesan trustees, or others, for the use of the Church of Ireland, or any diocese or parish, and then these trustees can divest themselves of the risks and trouble of management, and vest the lands in the Representative Body with the consent of that Body. Such consent is not withheld without reasonable grounds.

The property held by the Representative Body in trust for the Church consists of:—

1. The churches, burial grounds, and schoolhouses vested in the Body by the Church Commissioners pursuant to the Irish Church Act.
2. See and glebe houses, and lands purchased by the Body from the Church Commissioners.
3. Money received from the Commissioners on account of the commutation of ecclesiastical life-annuities, subject to payment of those annuities.
4. £500,000 received as compensation for private endowments confiscated by the Act.
5. Gifts for the use of the disendowed Church of property immovable and personal.

Particulars of all this property will be found in the reports annually presented to the General Synod.

The churches and schoolhouses were vested in the Body, subject to life-interests, to hold for the uses and purposes of the Church. It would appear that they remain vested in that Body in trust for the several parishes to be used by the clergymen

who, from time to time, succeed to the incumbency thereof by institution and induction—the clergyman occupying in law the position of caretaker as regards the churches.

Burial grounds are discussed in the next Chapter of this Essay. With reference to See and Glebe houses and lands: they were purchased by the Representative Body, and it was arranged that the purchases should enure to the benefit of each particular diocese or parish. This arrangement is carried out by the execution of leases from the Body to the bishops and clergy on terms which give the lessees the full benefit of the purchase.

"The management of glebes and parochial buildings" is the subject of the Constitution Chapter 13, with which is incorporated an elaborate code of rules. The details of these rules are far too voluminous to be discussed in this Essay, and the clergy have the assistance, both as regards matters of fact and law, of the Glebes Committee of the Representative Body. At present there are some thirty clergymen in occupation of glebes who have refused or neglected to obey the statutes which command such leases to be executed.

CHAPTER VII.

BURIAL GROUNDS AND BURIAL.

Chapter XII. of the Constitution is entitled, "Management of Burial Grounds," and is printed in the Appendix. In considering this chapter it is desirable to include some matters as to the rights, powers, and duties of members of the Church on the subject of burial, not strictly relating to the management of burial grounds; but the discussion will be limited to burial grounds vested in the Representative Body, excluding questions relating to other burial grounds, such as private cemeteries, and those vested in Boards of Guardians.

The Irish Church Act, 1869, section 12, vested in the Church Commissioners all churches and burial grounds appertaining to the Church of Ireland, subject to existing life interests therein; and section 25 provided for the vesting by the Commissioners in the Representative Body of all Churches in use when the Act passed, sub-section 6 declaring that no such vesting order shall affect the right of any person or persons to any vault or other place of burial within any Church or Ecclesiastical building, and that every such Vesting Order shall be deemed to be subject thereto, and to all such other rights of sepulture therein as may be subsisting at the date of such order. Section 26 enacted when any Church vested in the Representative Body has

a burial ground annexed or adjacent thereto, but not separated therefrom by any carriage highway, or that has been granted by a private donor to, or exclusively used by, the parishioners attending the said Church, such burial ground shall be included with the Church in the vesting order made by the Commissioners, subject to any life estate or interest therein, and shall pass to the said Representative Body accordingly, but without prejudice to such rights of, or in respect of, burial, *as may be subsisting therein*, or may be thereafter declared to subsist therein by Act of Parliament. Under vesting orders, made by the Commissioners pursuant to these sections (25 and 26), all the churches and churchyards of the Church of Ireland, with a few exceptions, are now vested in the Representative Body, and as it would appear for an estate in fee simple, subject to the rights of burial subsisting therein when the vesting orders were made. Subsisting rights mean not merely the rights of individuals then in actual possession of such rights, but includes also the reversionary rights of the successors of those in possession of such subsisting rights. In Morgan *v.* Smith (26 I.L.T. 135) Gibson, J., observed: "At Common Law the Churchyard is for the use, not only of the present but of future generations"; and this observation applies both to section 26 and subsection 6 of section 25. These rights, preserved by Act of Parliament, cannot be infringed or disturbed by any ecclesiastical legislation. The rights of persons to vaults, &c., in any church, and the rights of parishioners and persons who die in any parish to sepulture in the churchyard, whatever these rights may have been when the vesting orders were made, cannot be prejudiced except by an Act of Parliament.

These rights are creatures of the Civil Law and not part of the Ecclesiastical Law, which is made binding as by contract upon all members of the Church, and is subject to alteration at the will of the General Synod.

From what has been said, it is obvious that whenever a question shall arise touching vaults or churchyards, the first question is whether the particular church or churchyard has been given to the Representative Body by a vesting order.

The Church Statute, Chap. XII., sects. 1 and 2, entrusts the care of burial grounds so vested in the Representative Body, and also the care of any road or avenue appropriated to any such burial ground, to the Ministers (*i.e.* incumbents) and churchwardens of the several churches to which the same are respectively annexed, subject to the control of the Representative Body. Section 1 providing further, that the minister and church wardens may prevent trespass or other unlawful use of, or interference with, the same, and act on behalf of, and in the name of, the Representative Body (the trustee and owner of the legal estate in the burial grounds) in any proceedings requisite for the purpose ; but the minister and churchwardens are declared liable to indemnify the Representative Body as regards all costs and expenses, and the same are to be charged to the account of the Parish, in case the Select Vestry shall have approved of the proceedings. Probably it will be held that under these provisions the Represeutative Body may, in the former case, set off a claim for indemnity against any money payable by it to the ministers, and in the latter case deduct the costs from any fund held by the Representative Body in trust for the parish.

It is settled law that every parishioner *and* every person dying in a parish has at Common Law a right of decent sepulture in the churchyard or burial ground of the parish. This was laid down in Rex *v.* Coleridge (2 B. & Ald. 806), where the Court suggested that a writ of mandamus might issue from the Civil Court to compel the minister to bury a body brought in the usual way. See also the Representative Body *v.* Neil and Marshall (26 I.L.T., 419). Canon 9 declares that no Minister, due notice having been given to him thereof, shall refuse or decline to bury in such manner as is prescribed by the Book of Common Prayer any person who may have died within his cure. The Common Law gives the right of decent burial, and the Canon the right of a Church service; the former right is not limited to members of the Church or to professors of Christianity, or affected by any special circumstances of death; the latter right, that of the service is a matter of Ecclesiastical Law, and Civil Tribunals will not interfere: Rex *v.* Coleridge, *ubi supra*; Stephens' Laws of the Clergy, 188, 189. The Minister's duty is to obey the Rubric of the Revised Prayer Book of the Church of Ireland as regards the service, both as regards the persons to be buried, and the particular form of service to be used.

The meaning of the word "parishioner" was considered in Etherington *v.* Wilson (1 Ch. Div., 160), and was held to include an occupier of property situated in the parish, and for which such occupier was liable to be rated. Mellish, L.J., citing with approval the definition of Lord Hardwicke in Att.-Gen. *v.* Parker (3 Atk., 577), says: "'Parishioners' is a very large word and takes in not only inhabitants of the parish, but persons who are occupiers of lands

that pay the several rates and duties, though they are not resident nor do contribute to the ornaments of the Church."

There are numerous qualifications of this common law right of burial:—

1. Notice must be given. Canon 9 says: "Provided that twelve hours notice shall have been given to the Minister beforehand, and the burial cannot be required during the stated hours of divine service." Doubtless, the Civil Courts would recognise the reasonableness of these regulations, and in C. R. B. *v.* Lowry (27 I. L. T. 40) it was so decided.

2. Those who bring the body to be buried cannot require its burial in any particular part of the churchyard, even though that place had been marked out by the deceased in his lifetime: R. C. B. *v.* Neil (26 I. L. T. 419). The Minister and Churchwardens may exercise their discretion upon that subject (see section 5 of the Church Statute), nor is there any legal right to the exclusive appropriation of a place of sepulture without a faculty, or a proscription which implies a faculty: *per* Gibson, J.

3. Burial in iron or other metal coffins is not of common right. It is a matter to be arranged with the Minister and Churchwardens.

In R. B. *v.* M'Clelland & Auld (28 I. L. T. 40), Johnson, J., decided that the Rector and Churchwardens had a joint right to designate the place of sepulture. The Incumbent alone has no such right. In the case of non-parishioners not dying in the parish, the joint sanction must be obtained.

4. It has not been decided that the common law right of burial extends to cremated remains.

5. It is not only the right, but the duty of the Minister and Churchwardens to insist on decency of

interment; to forbid disturbance of the remains of the dead; not to permit graves which are known to be full to be re-opened; and to require new graves to be dug a proper depth, or to be sufficiently covered with earth.

6. This Common Law right to deposit the corpse in the ground does not carry with it any right to cover the ground with a monumental stone, or to erect a headstone or enclose the ground by railings. Such matters (I do not refer to cases in which faculties have been given) are as much matters of Ecclesiastical cognisance as the prayers used in the service.

Morgan *v.* Smith (26 I. L. T. 135) decided that a "right of or in respect of burial" (Irish Church Act, 1869, sect. 26) does not include a right to place a railing round a grave without procuring the proper sanction, and paying the prescribed fee.

In giving judgment, Gibson, J., said: "The process in this case was brought by the Rector and Churchwardens of Larne against the defendants, to recover certain fees alleged to be due in respect of a railing erected by the defendants in Larne Churchyard. By amendment, the Representative Church Body were added plaintiffs, and an alternative cause of action for trespass was joined. The question in the case is, whether the Irish Church Statute of 1889 (chap. 13, sect. 9) is valid. The statute referred to enables the Minister and Churchwardens to permit the erection of monuments and railings about graves, and to charge such fees for the erection of the same as the Select Vestry, with the consent of the Diocesan Council, shall appoint. Counsel, on behalf of the defendants, insisted that

the fee charged in pursuance of that statute could not be enforced, contending: (1) that the statute purporting to impose such a charge was *ultra vires* and illegal; (2) that the charge imposed, in pursuance of the statute, was unreasonable and excessive. The charge seems to me reasonable in amount. Much higher fees have been sanctioned in reported cases. The substantial question is, whether the Statute is authorised by section 26 of the Irish Church Act, 1869, which declares that the churchyard is to be vested in the Representative Body, 'without prejudice to such rights of, or in respect of, burial as may be subsisting therein, or may be thereafter declared to subsist therein by any Act of Parliament.' On behalf of defendants it was contended that at Common Law, in the absence of custom or prescription, no fee could be charged for the erection of a monument or railing, just as no fee could (in the absence of custom) be charged for burial itself; and the decision of Lawson, J., in Warnock's Case (20 I. L. T. 28), in favour of the legality of the charge, was challenged, as being contrary to authority. I reserved my decision in order to look carefully into the law and cases on the subject. At Common Law the churchyard is for the use, not only of the present, but of future generations, and hence can only be temporarily appropriated for the period of the dissolution of the body. In the absence of a faculty a brick grave or vault is therefore a usurpation upon the interests and rights of the community (Gilbert *v.* Buzzard, 2 Hag. 333; S. C., 3 Phillimore, 335). So a special fee may be imposed for interments where iron coffins are used. It is for the parson '(qr. now, and Churchwardens)' to decide in what part of the churchyard the burial

is to take place (*Ex parte* Blackmore, 1 B. & Ad. 122). A monument cannot be erected without the leave of the Rector or a faculty. The Rector has an interest in the churchyard; and the requirements of uniformity and free access to different parts of the yard (Bardin *v.* Calcott, 1 Hagg. Ap. 18), as well as the danger of the churchyard being prematurely exhausted by undue appropriations (R. *v.* Coleridge, 2 B. & Ald. 806 : Judgment of Best, J.), make it essential that the erection of monument railings should be under control. If the leave of the clergyman is necessary, as I think it is, it would seem that he might require a reasonable fee for giving his consent (Maidman *v.* Malpas, 1 Cons. R. 205; Dean *v.* Exeter, 1 Salkeld, 334). The statement in Burns' "Ecclesiastical Law," followed by Stephens, is in favour of the legality of a fee; and in Warnock's Case, the point was expressly decided by Lawson, J., whose opinion in this branch of law is entitled to peculiar respect. In my opinion, at Common Law the defendants had no right to erect any monument or railing without procuring the proper sanction, and paying the prescribed fee (if any). The Irish Church Act gave them no such right. I may add that, even if no fee could be charged, the defendants committed trespass in putting up a railing without lawful authority."

It would seem that, under the Statute of the Synod, the Incumbent and Churchwardens now represent the Rector (R. B. *v.* M'Clelland, 28 I. L. T. 40).

Chapter XII., section 3, provides that where, by faculty or prescriptions the members of a family have acquired a right to be buried in a particular place in any such burial-ground as aforesaid, such right shall, in conformity with the provisions in that

behalf of the Irish Church Act, 1869, be acknowledged, and effect shall be given to the same by the Minister and Churchwardens charged with the care of the churchyard; and section 4 declares that, when members of a family have been buried in a particular place, although it may have occurred not in the exercise of a right, the Minister and Churchwardens shall nevertheless guard against interfering with the use of such place unless on the ground of imperative public convenience or necessity; and section 5 declares that, except in a case in which such right or user exists, the Minister and Churchwardens shall determine the place of sepulture.

In a newspaper report of the case of Killindrey Graveyard, recently heard before his Honour Judge Roche, the learned judge is stated to have said, speaking of the fourth section of this chapter, "It seems merely to deal with the user by a family of a particular burial place, and to refer to members of a family as the class entitled to exercise the *quasi right*, irrespective of the place of death, or of the fact of those people being or not being parishioners; the Statute is very cautiously worded, but it seems to me to *create* in members of such families a new right subject to the control of the Minister and Churchwardens, to be exercised in case, in their opinion, considerations of imperative public convenience or necessity require it." An appeal was not taken from a decision founded on this judgment; but the question admits of further discussion in a Superior Court, and it seems doubtful whether this Church Statute creates any legal rights in favour of persons who are not members of the Church, or gives to members of the Church who, not being parishioners or dying in the parish, have

no legal right of burial anywhere in the burial ground or legal right of burial in a particular place therein.

The Public Health (Ireland) Act, 1878, s. 170, enacts:—"When, by usage or otherwise, any grave . . . or place of interment in any burial ground has been the burying place of, and used as such by, any family, no corpse of any person not having been a member of such family shall be buried in such grave or place of interment without the consent, in writing, of some immediate relative of the member of such family last interred therein." This Statute does not interpret the word family.

As regards faculties, Chapter VIII. of the Constitution, sect. 53, provides:—"The Archbishops and Bishops shall have and use all the same powers of granting faculties which they had and used at the time of the passing of the 'Irish Church Act, 1869.' Provided that every person considering himself aggrieved by the granting or withholding of any faculty (except in the case of the granting or withholding of a faculty for ordination) may appeal to the Court of the General Synod; and, provided that previous to the bringing of any snch appeal, the party considering himself aggrieved shall be entitled to have his case heard and adjudicated upon in the Diocesan Court, which Court shall have power to hear and determine same."

When a faculty has been granted to a man and his family, the word "family" seems equivalent to descendants, and applies to bodies of a member of a family which had ceased to be parishioners: Rugg *v.* Kings-Mill (2 Pri. C. 59). A faculty may be granted to a person who is not a parishioner: Bardon *v.* Calcutt (1 Cons. R. 17).

Vaults, &c., must be kept in repair by the family, it is not the duty of the Vestry to keep private vaults in repair. When a vault is in a dilapidated condition, and the family will not repair, it should be levelled to the ground and filled up, memorial slabs being preserved: St. Botolph's Case (H. 1892, P. 173. 4).

The nature of faculties in relation to burial is much discussed in a second case of St. Botolph (1892, p. 167). The Judge says (p. 167):—"No alteration can lawfully be made in any church or churchyard unless sanctioned by a faculty." (Compare, however, as regards Ireland, Canon 40). "It is sometimes erroneously supposed that the owner of a family vault in a church or churchyard has a freehold interest in it. But this can only happen when a vault is in a *private* chapel or *private* aisle, the fee of which is in the owner of the chapel or aisle. For the fee of the church or churchyard is by law in perpetual abeyance, whilst the freehold of the chancel is vested in the rector, and of the church and churchyard in the incumbent, but in both cases for the use of the parishioners." In Ireland the fee and freehold of all the church and of the churchyard is vested in the Representative Body. "The joint control of the church and chancel and of the churchyard" (speaking of England) "is vested in the Chancellor as ordinary for this purpose. It is by virtue of this control that chancellors formerly granted faculties for vaults in churches or churchyards, and latterly in churchyards only, but in every such faculty there is a reservation of the jurisdiction of the Court—what is really granted by the faculty is the use of the ground for a vault so *long as it is not required for the general use of the*

parishioners; and when it is so required, by the practice of the ecclesiastical Courts, the owner of the vault is entitled to have it removed to another site in the churchyard at the cost of the applicant for the faculty."

In Hickey *v.* Sullivan (28 I. L. T. 156) the judgment of Gibson, J., contains an important reading on the law of faculties in connection with burial grounds. The learned Judge said:—"A cemetery such as this is, at Common Law, the common property of all in the parish, and exclusive appropriation is an encroachment on the rights of the parishioners which can only be justified by a faculty or a prescription which supposes a faculty, to establish which very cogent evidence is required. Such appropriation is to some extent analogous to that of a pew, the law as to which has been recently laid down by the House of Lords in Halliday *v.* Phillips (1891, A. C. 228). Here prescription or faculty annexing the right to an ancient messuage is out of the question, as the plaintiff had no such messuage. Whether a faculty creating a descendible title in gross enforceable in a Court of Common Law can be granted at common law in respect of a grave-space in a churchyard is a matter of some doubt: Mainwaring *v.* Giles (5 B. and Ad., 361). In Magnay *v.* St. Michael (1 Hag., 48), on an unopposed motion, the Dean of Arches no doubt allowed a faculty setting apart a vault near a chancel for the use of M. and his family for ever, so long as they should continue parishioners and inhabitants. How such a faculty would be deemed to descend and enure at law has not been the subject of decision. In Harris *v.* Drewe (2 B. and Ad. 164) a somewhat similar faculty was deemed to be attached to occupation.

But could a lost faculty be presumed at all? Such a faculty, as in Magnay's Case, could only be proved by the clearest evidence, and could not be presumed from mere user. A faculty is a judicial act after due notice to all interested. One of the matters always considered is the status of the applicant and his property in the parish. In this case the plaintiff is a labourer without property, and the evidence is quite insufficient to establish any grant of any faculty in derogation of the rights of other parishioners."

As the fee-simple of churchyards is now vested in the Representative Body, this corporation might make a grant good at law of a site for a vault, but the Church Body is a trustee for the parishioners, and would probably be guilty of a breach of trust if it were to make such a grant, or in any way interfere with the legal rights of the parishioners without the sanction of a faculty, and it would seem safe and proper to continue the old practice and to rest the rights to vaults upon the right of user confirmed by a faculty. The Representative Body are indeed legal owners, but, as has been said, they hold in trust for the parishioners whose rights and interests are placed for safe keeping in the custody of the Ecclesiastical Court: Adlam *v.* Colthurst (2 Ad. and E. C., 30, 38). Numerous modern cases have been decided in the English Courts upon the subject of faculties for burial. In Re Kerr (1894, P., p. 287) it was said that cremated remains cannot be lawfully interred in or under a church without a faculty.

The 6th section of Chapter XII. directs that no corpse shall be buried within twelve feet of the church fabric except in a vault as mentioned, and the 7th section enacts that no corpse shall be

disinterred or removed except on a warrant from the coroner or other authorised officer, or by the authority of a faculty from the Bishop's Court. In the case of St. Michael Bassinshaw (1893, P., p. 233) an order in Council had been made for the removal and reinterment of human remains, and it was held that this was not inconsistent with the Court of the Ordinary possessing exclusive jurisdiction to authorise the removal and reinterment of remains buried in consecrated burial places or vaults in consecrated ground; and a faculty was decreed, on the application of the Rector and Churchwardens, giving authority for the removal and reinterment of the remains, but confining the reinterments to a place of burial to be specified in such faculty, and containing provisoes as to the mode in which the same should be carried out, and for safeguarding the interests of the relatives of the persons whose remains were proved to have been buried beneath the church. "The Court being of opinion that the order in Council cannot lawfully be carried out without the authority of a faculty, inasmuch as it involves interference with the fabrics and fittings of the church, interference with faculty vaults secured to families by decrees of the Court, and the disturbal and removal of remains deposited in consecrated ground." The whole of this judgment will repay perusal. This case followed that of St. Mary at Hill (1893, p. 395), where a faculty was decreed directing the Churchwardens to do what was required to be done by the Order in Council, with provisions inserted for the safeguard of the fabric of the church, and for authorising the families of any person buried in the vaults to remove the remains of their relatives to any consecrated burial ground they might select.

Sections 8, 9, 10, and 11 are conversant with the subject of fees; section 8 providing that "The Select Vestry of the Church to which the burial ground is annexed shall appoint a gravedigger, who shall be entitled to such reasonable fee as the Select Vestry may appoint for digging a grave, unless the same be otherwise provided for, with the consent of the Select Vestry"; and section 9, declaring that "The Minister and Churchwardens shall have power to permit headstones, flatstones, railings, and vaults to be erected and made; and shall be entitled to charge such fees for the erection of the same, and for burial in such vaults, and in those already made, and in graves, respectively, as the Select Vestry shall appoint, with the consent of the Diocesan Council, the provision for payment of the official gravedigger seems legitimate." Formerly the Incumbent had a right to appoint a gravedigger, and the so-called fee is not properly speaking a fee: it is a *quantum meruit* for necessary work and service. It would not be reasonable to allow the work to be entrusted to strangers unskilled in gravedigging, and careless of the preservation of the churchyards and the sanctity of adjacent graves; the gravedigger is to retain the payment for his own use. The fees mentioned in section 9 seem to be legal, with one exception. Can the Minister and Churchwardens charge fees as of right for mere burial in a grave of persons having that right at law? There may be a prescription, or immemorial custom, which, if proved to exist, would authorise the charge, but in the absence of such a qualification of the Common Law right of burial, it is not legal to demand a fee for simple burial in a grave. To this effect is the careful judgment of Holmes, J., in

C. R. B. *v.* Neil and Marshall (26 I. L. T., 419); and, therefore, so far as section 9 seems to authorise a claim for such fees in the absence of prescription, the legislation of the General Synod would appear to be *ultra vires* and ought not to be acted upon by Ministers or Churchwardens.

Fees may be claimed for the burial of bodies of those who are not parishioners, and have not died in the parish, in the absence of special rights of faculty. When a particular place of sepulture is desired, notice of the proposed place should be given both to the Minister and the Churchwardens. This notice is distinct from that mentioned in Canon 9.

Section 9 further provides: "That no inscriptions be allowed upon such erections, *i.e.* headstones, flatstones, and vaults, unless previously approved of by the Minister, with an appeal to the Ordinary." This section vests in the Minister, in the first instance, the power to prohibit any inscription he may think proper. An appeal lies against a refusal to the Ordinary, who will decide the matter upon the principles of judicial discretion, determining whether the proposed inscription is or is not in harmony with the doctrines and formularies of the Church of Ireland.

There are cases in the books on the subject of proper and improper inscriptions; amongst others Kent *v.* Smith (1 P. D., 73), Egerton *v.* Auld of Odd Rode (1894, P., 15). These were cases on faculties, but it seems doubtful whether the conclusion of section 9, giving the primary right of objection to the Minister, does not supersede the proceeding by faculty in relation to inscriptions on headstones, flatstones, and vaults outside the Church. In

Egerton *v.* Auld, it was decided that the Ordinary ought not in his discretion to sanction the introduction into a Church of any inscription of which the words "Of your charity, pray for the soul of H. F., deceased, and for the soul of J. H. C., deceased," would form a part.

Stopford, citing Breeks *v.* Woolfrey (Curt. 880, p. 254), says: "Before giving leave for erecting a tombstone, a clergyman should always ask for a copy of the inscription, because if he should give permission, and the inscription should afterwards appear objectionable, he cannot then remove it without great cost and trouble in procuring a faculty."

The appeal to the Diocesan Court, given by sect. 13, is limited to the cases of persons aggrieved by a refusal, *e.g.* a refusal by a Minister to permit an inscription on a headstone. Suppose a case in which the Minister consented to an inscription which the Churchwardens, Parishioners, or Ordinary considered objectionable, is there a remedy? Probably a faculty might be obtained for its removal, if it was improper.

On the subject of burials, the 54th Canon provides: "Every Rector, Vicar, Incumbent, or Curate, who shall have the keeping for the time being of any Register Books of Baptism, of Marriages, or of Burials, shall at all reasonable times, on demand, make search in any Register Book in his keeping, and shall give a copy certified under his hand, of any entry or entries in the same, on payment of the fee hereinafter mentioned; that is to say, for every search extending over a period not more than one year, the sum of One Shilling, and Sixpence additional for every additional year."

An observation must be added upon the subject of churchyards and faculties.

In two modern cases the Chancellor of London granted faculties authorising the appropriation of part of a consecrated churchyard to the widening of a street, and the construction of underground chambers with the removal of human remains: St. Botolph's Case (1892, p. 161); St. Nicholas' Case (1893, p. 58); but in a still more recent case the Chancellor of Rochester decided that the Ecclesiastical Court had no jurisdiction to grant a faculty for the appropriation of consecrated ground to any secular use: Plumstead Case (1895, p. 225). The Chancellor of Rochester's judgment was mainly based upon the cases of Harper *v.* Forbes, before Dr. Lushington (5 Jur. N. S. 275); and Reg. *v.* Twiss (L. R. 4 Q. B. 407), where Cockburn, C. J., said: "I do not hesitate to express a very decided opinion that, when ground is once consecrated and dedicated to sacred purposes, no judge has power to grant a faculty to sanction the use of it for secular purposes, and that nothing short of an Act of Parliament can divest consecrated ground of its sacred character." Whether the Irish Church Courts will adopt the opinion of Cockburn, C. J., and if so, whether the General Synod has a power corresponding to that of Parliament, remains to be decided.

CHAPTER VIII.

MARRIAGE.

MARRIAGE requires a separate chapter. The discussion will be limited to the rights and duties of members of the Church of Ireland in relation to marriage, and will not include the consideration of the civil law as to the validity or nullity of marriages, or the dissolution of marriage in certain cases, the judicial separation of married persons or the restitution of conjugal rights, all of which are matters for the exclusive jurisdiction of Parliament and the temporal Courts of the United Kingdom, and in which the tribunals of the disestablished Church or its Synods have no authority to interfere.

The Eleventh Canon directs that no clergyman shall solemnise marriage between parties who are within the prohibited degrees of consanguinity or affinity. This is simply negative and declaratory of ancient Ecclesiastical Law, and there does not appear to be any affirmative Canon or other law passed by the General Synod commanding Ministers of the Church to solemnise marriage in any case.

What, then, are the legal rights and legal duties of members of the Church of Ireland, clerical and lay, as regards the solemnization of marriage under the civil law of the land and the Ecclesiastical Law

of Ireland, as it existed on the 1st of January 1871, so far as this old Ecclesiastical Law has not been altered upon the subject by the General Synod or subsequent Civil Law? This Ecclesiastical Law is legally binding, as by contract, on all members of the Church, but is of no force save as between members of the Church. The Civil Law is, of course, obligatory upon all subjects of the Crown, including members of the Church of Ireland.

The Act of Disestablishment was passed on the 26th July, 1869; and on 10th August, 1870, the Imperial Legislature passed an Act "to amend the law relating to marriages in Ireland." This Act applies to Ireland only. The Statute after providing for the solemnization of marriages between Protestant Episcopalians, *i. e.* members of the Church of Ireland, in the Churches mentioned in section 32 (*i.e.*, 1, churches and chapels in which theretofore such marriages might be solemnized, and in which Divine Service should continue to be performed; and, 2, churches and chapels which, after the passing of this Act, should be licensed as provided in the Act), enacts, in section 33, that as regards all such marriages the ceremony shall be preceded by:—

"1. Publication of banns, to be made in the manner and *according to the rules at the time of the passing of this Act in force in Ireland*, in parish Churches of the United Church of England and Ireland.

"2. A License or Special License; or,

"3. A Certificate from a Registrar granted as at the time of the passing of the Act."

It is manifest, that care should be taken by a

clergyman, that some one of these three requisites should have been satisfied before he solemnizes a marriage. The rules as to the publication of banns in Ireland, existing on the 10th of August, 1870, should be observed. We refer to the Rubrics of the Order of Matrimony, and to Canon 52, 1634–1171.

The banns of all that are to be married, save in cases of license or certificate, must be published in the Church in the course of Divine Service, the Curate saying after the accustomed manner as follows in the order.

If the persons that are to be married dwell in divers parishes, the banns must be asked in both parishes, and the Curate (*i.e.* the officiating Minister) of one parish shall not solemnize matrimony between them without a certificate of the banns having been therein asked from the Curate of the other parish.

Canon 52, 1634–1711, is as follows:—"No Minister of what place soever, nor under colour of any peculiar liberty or privilege claimed to appertain to any Church or Chapel, shall, upon pain of deprivation if he be beneficed, or degradation if he be not beneficed, celebrate matrimony between any persons without a faculty or license granted, except the banns of matrimony have been first published three several Sundays *or holidays* in the time of Divine Service, in the Parish Churches and Chapels, *wherein the said parties have dwelled, by the space of three months before.* Neither shall any Minister, upon the like pain, under any pretence whatsoever, join any persons in marriage at any unseasonable times, *but only between the hours of eight and twelve in the forenoon*, nor in any private place, but either in the said Churches or Chapels,

where one of them dwelleth, and likewise in time of Divine Service; nor when banns are thrice asked, before the parents and governors of the parties to be married, being under the age of twenty-one years, shall either personally, or by sufficient testimony, signify to him their consents given to the said marriage."

This Canon is no longer a Canon of the Church of Ireland, but its provisions altered only as to the lawful hours of marriage being extended from noon to the hour of 2 p.m., and subject to a question as to publication on holidays, have still force by the Civil Law, under the Clause quoted from the Act of 1870, as a rule in force in Ireland as to the publication of banns when the Act passed, and must be observed by the Clergy. It is the duty of the Clergy to observe these provisions. It is a law of the Church of Ireland, and a breach thereof would be an offence under the Church Statute Constitution, chapter viii., section 52. The "three months" period is a fixed and convenient test of *bonâ fide* residence. "Three months before" means three months immediately before the publication. Any person may forbid the banns. Under this Canon, the Minister must inquire into the age of the parties before he marries them, and, if under age, must be satisfied of the consent of the parents or guardians.

The law which now regulates consent to the marriage of minors is the Act 49 & 50 Vict., which modifies the 7 & 8 Vict., section 1, and is thus stated in "Matheson's Digest," as follows:—

"The following are the persons authorized to give consent:—

"1. If both parents are living:—*The Father alone.*

"2. If the Father is living and the Mother dead, she having previously nominated a Guardian or Guardians to act jointly with the Father, and such appointment having been confirmed by the Court after being satisfied as to the unfitness of the Father to be sole Guardian:—*The Father jointly with the Guardian or Guardians so nominated by the Mother and confirmed by the Court.*

"3. If the Father is living and the Mother dead without having made any appointment so confirmed as aforesaid:—*The Father alone.*

"4. If the Father is dead and has appointed no Guardian or no Guardian has been appointed by the Court to act jointly with the mother:—*The Mother alone.*

"5. If the Father is dead and has appointed a Guardian, or if a Guardian or Guardians shall have been appointed by the Court to act jointly with the Mother:—*The Mother jointly with such Guardian or Guardians.*

"6. If the parents are both dead and a Guardian or Guardians shall have been appointed by one of them only:—*The Guardian or Guardians so appointed.*

"7. If the parents are both dead and a Guardian or Guardians shall have been appointed by each:—*The Guardian or Guardians appointed by the Father and by the Mother, respectively, acting jointly.*

"8. If a Guardian or Guardians shall have been appointed by the High Court of Justice to act without the intervention of any parent, or to act when the parents are deceased:—*The Guardian or Guardians so appointed by the High Court of Justice.*

"In the event of Guardians being unable to agree, any of them may apply to the Court for its direction.

"The High Court of Justice may remove any Guardian from office and appoint another.

"In cases of minority the consent should be obtained on one of the forms supplied for the purpose and verified to the satisfaction of the Registrar.

"If there is no person legally authorized to give consent the clause of the oath, or declaration, must be altered accordingly.

"If the Father of a minor is *non compos mentis*, or the Mother or Guardians of such minor whose consent is necessary are *non compos mentis*, or in parts beyond the seas, or unreasonably, or from undue motives, refuse or withhold their consent to a proper marriage, application may be made to the Court for a Declaration that the proposed marriage is a proper one.

"No person is authorized to give consent in the case of an illegitimate minor, except a Guardian or Guardians appointed by the Court.

"In the case of a ward in Chancery, the consent of the Court must be obtained. Persons issuing licence or other authority for such a marriage, or solemnizing such a marriage without the required consent, are liable to severe punishment.

"The minimum age at which marriage can legally be contracted in Ireland is 14 years for males, and 12 for females, and no marriage contract is binding unless the parties have reached those ages."

Two curious and difficult questions have been raised in relation to the publication of banns—1. Whether the publication should be made during the time of morning service, or of evening service (if there be no morning service), immediately after the second lesson or immediately before the offertory sentences; and 2, whether the publication may be

properly made on holidays as well as on Sundays. The Rubrics in the present Revised Prayer Book of the Church of Ireland authorise publication at both periods; the Books of the Church of England and of the lately United Churches only after the second lesson. The English Rubric was founded, or supposed to be founded, upon Lord Hardwicke's Act, 26 George II., c. 33, and unquestionably the practice was established in England under this Act of making the publication after the second lesson at morning prayer, and this practice has prevailed, notwithstanding a doubt expressed (1856) by Alderson, B., in Regina *v.* Benson, reported in Phillimore's "Ecclesiastical Law," 761. The doubt of the learned Judge seems to have been founded upon probability of intention, but the construction of the words seems too plain to permit of resort to probable intention, and the Statute does not recognise any publication at any other time than after the second lesson, while it deals with all publications of banns.

If the Rubrics of the English Book put a true interpretation on Lord Hardwicke's Act, then under the Act of Union, clause 5, the publication after the Second Lesson at Morning Prayer became part of the Ecclesiastical Law of Ireland existing in 1870, and to be observed under that Act. All the Rubrics are part of the Ecclesiastical Law, valid as such, unless contrary to the Civil Law which is always supreme. Lord Hardwicke's Act was repealed by 4 Geo. IV., 76, but that Act had no operation out of England, and did not repeal the Ecclesiastical Law of Ireland established by Lord Hardwicke's Act. There is a difference of opinion and practice on the question in Ireland; and while the publication is now more commonly made before the offertory, in some

churches it is made after the Second Lesson. In the opinion of the writer, without meaning to suggest that an error on this point would affect the validity of a marriage ceremony, it would be desirable that banns should be published, as authorised by the Rubric prefixed to the Form of the Solemnization of Matrimony, after the Second Lesson. Uniformity is to be desired; and this course seems legal and best calculated to give the effective notice which is the object of publication. The publication after the Second Lesson is calculated to arrest attention, whereas the publication before the offertory, mixed up with notices of Charity Sermons and details of parish work, is often not observed or noticed.

An important letter on this subject by the Rev. Dr. Stubbs, S.F.T.C.D., is inserted with his permission:

"Before the Reformation, according to the Sarum Breviary, the Banns should be published at the Mass. After the Reformation the English and Irish Prayer Books contained Rubrics directing the banns to be published after the Nicene Creed, and the Rubric in the English Marriage Service was precisely the same in the English Prayer Book as it was in the Irish Prayer Book when the Church was disestablished, and is as follows:—

"First the Banns of all that are to be married together must be published in the Church three several Sundays or Holidays in the time of Divine Service, immediately before the sentences of the offertory." See Prayer Book of 1717.

Then came Lord Hardwicke's Act, 26 Geo. II., ch. 33, which enacted that all Banns of marriage shall be published in the forms of words prefixed

to the Office of Matrimony in the Book of Common Prayer upon three *Sundays* preceding the solemnization of marriage during the time of Morning Service, or of Evening Service (if there be no Morning Service in such Church or Chapel upon any of those Sundays) immediately after the Second Lesson." No change was made by authority of Parliament and of Convocation in the English Prayer Book. About the year 1809 the Curators of the Press at Oxford (see the Bishop of Exeter's speech in Hansard III., VIII., 21) caused the Rubric to be altered in all the Oxford Prayer Books, so as to make it direct that the banns shall be published "after the Second Lesson at Morning Prayer or the Second Lesson at Evening Prayer." But the Statute of Geo. II. only enabled the banns to be published at Evening Prayer, when there was no Morning Service, and then after the Second Lesson, and according to a decision of Lord Mansfield and Baron Alderson the Statute left the Rubric untouched. In Reg. *v.* Benson (1856) (Phill. Ecc. Law) Sir Edward Alderson expressed a doubt whether the publication of banns in England was valid under this Act after the Second Lesson at Morning Prayer instead of after the Nicene Creed. Lord Hardwicke's Act did not apply to Ireland, so the old custom of publishing the banns was continued here."

Probably, *per incuriam*, it was not observed that Lord Hardwicke's Act was extended in Ireland, so far as it included Ecclesiastical Law of England, by the Act of Union, and Rubrics are certainly Ecclesiastical Law.

Whatever may be the true construction of Lord Hardwicke's Act on the first point just considered, it

clearly prescribes that the publication must be made on Sundays, and on Sundays only, and therefore publication on Holidays does not meet the requirements of the Act of 1870.

Section 33 of the Statute of 1870 preserves the provisions of the Statutes 7 & 8 Vict. c. 81, and 26 Vict. c. 27, and therein the lawful time of celebration was extended from noon to 2 o'clock, p.m.

Sections 34, 35, and 36 of the Statute authorise Bishops to license Churches and Chapels for marriage, and to nominate persons to issue licenses for marriage, and to issue Special Licenses where both parties to the intended marriage are Protestant Episcopalians, and a Form of License is given in the Schedule to the Statute.

In relation to Marriage Licenses, all the provisions of the Act appear to be enabling, not mandatory or directory; but if the nominee in his discretion shall refuse a license, an appeal lies to the discretion of the Bishop, who may ratify or overrule the act of the nominee. (The discretion of the Bishop and his nominee are discussed by Dr. Tresham, Chancellor of London, in the *Times*, July 3, 1895, and by Sir Richard Webster, Attorney-General, in the *Times*, May 29, 1895.) It does not seem that there is any duty imposed on any person to issue a Marriage License, or that any complaint on the subject could be entertained by a Civil Court or an Ecclesiastical Tribunal. It is a matter of discretion: Case of Prince of Capua (30 L. J. 71, n.).

On the other hand it would seem that a Minister is under a legal obligation to publish banns between two persons, members of the Church of Ireland, one of whom is resident in his cure, when there is

no lawful impediment and the necessary preliminaries have been observed. The English Act, 4 Geo. IV., c. 76, does not extend to Ireland, and there are not any reported decisions on the point; but the Rubrics of the Prayer Book are the law of the Church, framed for the purpose of giving effect to rights of marriage. The Rubrics of the Prayer Book of the Church of Ireland declare that the banns must be published in the Church, the Curate saying, after the accustomed manner: "I publish, &c."; and then the Imperial Statute refers to the rules then in force on the subject. The remedy for a refusal to publish would be properly sought in the Church Tribunal. Possibly a Civil Action would also lie. Lord Grimthorpe writes: "Nobody can lawfully refuse the banns even of divorced persons."

Assuming that banns have been duly published, or a proper license from the Bishop or his nominee granted, or a Registrar's Certificate obtained, it seems to be the law of the Church of Ireland that it is the duty of a Minister to celebrate the marriage at the request of a member of the Church.

There are two reported cases of proceedings in the English Civil Courts on the subject: one, Davis *v.* Black (1 Q. B. 900), was an action; the other, the Queen *v.* James (19 L. J. M. 179), was an indictment. In both cases the proceedings failed on technical points: in neither was there a decision, but the Reports show that the Judges did not concur in their opinions, and entertained doubt. But the doubt related not to the question of duty, but to that of the jurisdiction of the Civil Court, and it seems to have been undoubted law that the Ecclesiastical Court in England would punish a clergyman for

refusing to marry parties properly qualified; and, accordingly, in Argar *v.* Houldsworth (2 Sec. 514), when articles were exhibited in a Diocesan Court against a Vicar for refusing to solemnise a marriage, and it was argued that a Minister is not obliged by law to marry by license, it was decided that a license was a legal authority for marriage, and that a Minister was guilty of a breach of duty who should refuse to marry pursuant to a proper license from his ordinary, and the obligation is recognised in relation to the case of banns and certificate by the Irish Marriage Act (7 & 8 Vict. c. 1, sect. 1), which enacts that any person in Holy Orders of the United Church of England and Ireland shall be bound to solemnize marriage on the production of the Registrar's certificate in like manner as he is required by any law or canons now in force after publication of banns, a provision which applies to the Church of Ireland (33 & 34 Vict. chap. 110, sect. 33). The refusal of the Minister is therefore a breach of the law of the Church of Ireland, cognisable in her tribunals, and may now be the subject of proceedings in the Civil Court by virtue of the implied contract, when the aggrieved person is a member of the Church of Ireland.

The general obligation of a minister to marry persons, when banns or license or Registrar's certificate have been published or given, is subject, of course, to the exceptions mentioned in Canon 11 of persons within the prohibited degree.

The question as to the obligation of a minister to marry a person whose marriage has been dissolved, not being a widower or widow, requires more serious consideration. In Ireland the Civil Court has no jurisdiction to dissolve marriage. Its jurisdiction is

limited to a decree for judicial separation technically known as a divorce *a mensa et toro*, as distinguished from a divorce *a vinculo matrimonii*. As regards Ireland a marriage can only be dissolved by an Act of the Imperial Parliament. In two recent cases (1886) decrees for divorce *a mensa et toro* were pronounced by the Irish Court, and afterwards private Acts of Parliament were passed dissolving the marriage. In one case, B. *v.* B., the husband was petitioner, and the marriage was dissolved on account of the adultery of the wife. In the other case, W. *v.* W., the wife was the petitioner, and the marriage was dissolved on account of the adultery and cruelty of the husband. In both cases it was enacted that the bond of matrimony between the parties being broken and violated by the respondent was thereby and from thenceforth dissolved and made void to all intents and purposes, and that it should be lawful for the petitioner, *i.e.* the innocent party, to marry, as well in the lifetime of the respondent as after her or his death, any woman or man whom the petitioner might lawfully marry if the respondent were actually dead, and that any such future marriage should be good and so taken in all countries and to all intents, &c. It will be observed that this enactment gives power of marriage in express words to the innocent party only, but inasmuch as the dissolved marriage was made void to all intents, it necessarily follows that the guilty party might in point of law marry again, albeit not a widow or widower.

There is no pretext for the allegations that the marriage of persons divorced *a vinculo* is contrary to the law, discipline, or doctrine of the Churches of Ireland or England.

The only ecclesiastical prohibition to be found was one against the marriage of persons divorced *a mensa et toro*: a mere judicial separation, not a dissolution of marriage.

In 1857 Parliament passed "An Act to amend the Law relating to Divorce and Matrimonial Causes in England." The Act established an English Court, and power was given to this Court to pronounce a decree declaring a marriage to be dissolved upon various grounds mentioned in the Statute, including those upon which the Acts in the cases of B. *v.* B. and W. *v.* W. were founded, and thereupon, says the Statute of 1857, section 57, it shall be lawful for the *respective* parties to marry again as if the prior marriage had been dissolved by death. And both parties innocent and guilty may in point of law marry again, albeit not a widow or widower. The form of judgment in the English Divorce Court is "the Judge, on the application of the petitioner, by his final decree, pronounced and declared said marriage to be dissolved." So far there is nothing in the cases of persons whose marriage has been dissolved either by an Act of Parliament or English decree to entitle a Minister to refuse marriage when parties are not within the prohibited degrees, and the requisites of banns, license, or certificate exist.

But the 57th section concludes with a proviso in these words: "Provided always that no clergyman in Holy Orders of the *United Church of England and Ireland* shall be compelled to solemnize the marriage of *any person* whose former marriage may have been dissolved on the ground of *his or her adultery*, or shall be liable to any suit, penalty, or censure for *solemnizing or refusing* to solemnize the marriage of any such person.

Note in the first place that this provision is limited to the new marriage of the guilty person—the man or woman who shall have been guilty of adultery. It has no relation to the marriage of the *innocent* husband or wife; and as regards such innocent person, the proviso does not in any way affect the obligations, civil or ecclesiastical, of ministers of the Church of Ireland.

In the second place, the proviso seems to apply for the protection of clergymen as regards the guilty persons, whether the marriage shall have been dissolved by decree or by Act of Parliament. The reason of the prohibition is equally applicable to both cases, and there is nothing in the words of the proviso to restrict its application to dissolutions by decree.

In the third place, the words "United Church of England and Ireland" must be taken to apply, since the separation of the Churches, to each of these Churches, so that the protection of the proviso now extends to clergymen in Holy Orders of the Church of England, and those in Holy Orders of the Church of Ireland. Before the Church Act of 1869, the section in terms applied alike to ministers of the United Church in England and in Ireland, and if separation of the Churches has withdrawn the protection of clergymen of the Church of Ireland officiating in Ireland, it must also have withdrawn the protection from clergymen of the Church of England. But this has not been suggested.

The statute is not merely an English Act: there is no clause declaring it shall not apply to Ireland. It is an English Act in its effect so far as it creates an English tribunal and invests that tribunal with various powers in matrimonial causes and matters;

but its enactments of a general character are general in their operations, and apply when they are in their own nature applicable to all persons subject to the jurisdiction of the Legislature which passed the Statute. A decree for divorce in cases within the jurisdiction of the Court is of force generally, and certainly as regards all citizens of the United Kingdom in relation to the clergy and laity of Ireland and Great Britain alike.

At present while the law of the Church of Ireland prohibits, as we have seen, the marriage of persons nearly related, there is no law of the Church which forbids or discountenances the intermarriage of divorced persons.

Whether the General Synod has power to change the existing law as regards the marriage of divorced persons, whether innocent or guilty, or the obligations of Ministers, may be doubted; but it would seem to be in the highest degree inexpedient to go beyond the proviso and place ecclesiastical restrictions on the marriage of persons innocent of the offence for which their former marriage was dissolved, or absolutely to forbid the solemnization of the marriage of the offending party. It is quite open to bishops to refuse licenses, and to stop the issue of licenses of divorced persons, as they in their discretion may think fit.

The 58th section contains a further proviso. That when any Minister of any church of the United Church of England and Ireland shall refuse to perform such marriage service between any persons who, but for such refusal, would be entitled to have the same service performed in such church, such Minister shall permit any other Minister in Holy Orders of the said United Church entitled to

officiate within the diocese to perform such service in such church. This proviso also applies to the ministers of the Church of Ireland, but a question may be raised how far the Minister has power to give such permission since 1869, and how far the General Synod might restrict any such power. The writer, however, concurs in the report of a Church Committee lately presented to the General Synod to the effect that as divorced persons are by statute law competent to marry again, the Committee could not advise the passing of a Church Statute prohibiting them from being married in a Church.

It would not, to say the least, be expedient to enact that no clergyman should be permitted to solemnise a marriage sanctioned by the Imperial Legislature, and the attempt would be attended with great difficulty. Such a law could only be founded upon the assumed absolute indissolubility of marriage—a doctrine not held by the Churches of Ireland or England, or, as it is believed, of any Protestant Church. I may refer to a Paper on the marriage of innocent divorcees, by Lord Grimthorpe, a very learned ecclesiastical lawyer, published in the *Nineteenth Century Review* for February, 1895. He observes:—"But not a few of the English clergy have already reached the point of repelling from the communion or excommunicating both parties to any marriage of whom either is an innocent divorcee, and not a widower or widow, besides refusing to perform any such marriage, though that is in defiance of the Divorce Act, 1857, which was carried by a great majority of bishops in every important division. That Act does allow them to refuse to marry guilty divorcees; and therefore I think the licensing authority of any diocese

may well refuse to license them, though nobody can lawfully refuse their banns." A precedent on this subject is to be found in an order issued by Bishop Woodford, of Ely, to the licensing authority of the diocese in 1881, "that no marriage license be granted for the marriage of a person divorced on the ground of his or her adultery." In 1888 this order was confirmed by Bishop Woodford's successor.

An interesting discussion on religious opinions and practice as to divorce and the re-marriage of divorced persons will be found in Geary on "The Law of Marriage and Family Relations, 1892." A copy of the Paper presented to the General Synod is printed in Appendix D. That Paper also treats of some of the requisites of a valid marriage, a subject not discussed in this Essay.

APPENDIX A.

CONSTITUTION OF THE CHURCH OF IRELAND, 1889.

CHAPTER VIII.

(AS AMENDED, 1893-4-5.)

ECCLESIASTICAL TRIBUNALS—OFFENCES, SENTENCES—FACULTIES—REGISTRIES—AND LAY DISCIPLINE.

1. The Courts hereinafter defined shall be the Ecclesiastical Tribunals of the Church of Ireland; they shall possess the powers and proceed in the manner hereinafter prescribed, and shall respectively be called the Diocesan Courts of the several Dioceses and United Dioceses, and the Court of the General Synod.

2. There shall be a Diocesan Court in each Diocese or United Diocese, which shall have power and jurisdiction to hear and determine all cases, not involving any question of Doctrine or Ritual, in which any person subject to the jurisdiction of the said Court shall be charged with any offence against any Law or Canon of the Church which shall be in force for the time being; but subject in every case to an appeal to the Court of the General Synod.

3. The Archbishop or Bishop of each Diocese or United Diocese, as the case may be, shall from time to time, as occasion may require, appoint under his Episcopal Seal (which appointment shall be filed of Record) a fit and proper

person as Chancellor, to sit with him in the Diocesan Court as his Assessor, who shall be a barrister of ten years standing at the least at the Irish Bar, and shall hold office for life, or until resignation, or order of removal by the Archbishop or Bishop, as the case may be, founded upon a Resolution of the Diocesan Synod: Provided always that nothing herein contained shall prevent the same person from holding office as Chancellor in two or more Dioceses or United Dioceses: and provided also, that in case of the disability of any Archbishop or Bishop to sit in his Court by reason of illness or any other hindrance, such Archbishop or Bishop shall have power to appoint a Bishop or Clergyman to sit as Commissary for him and in his place. The Archbishop or Bishop, or his Commissary, shall be the Judge in the Diocesan Court, and shall in every case be assisted by his Chancellor. The Clerical members of the Diocesan Synod shall elect three Clergymen, and the Lay members shall elect three Laymen, as members of the Diocesan Court, who shall hold office for five years, and shall be capable of re-election. Any casual vacancy by death, resignation, or continued absence from Ireland for twelve months, occurring among the Clerical or Lay members of any Diocesan Court, shall be filled as soon as conveniently may be by the Clerical or Lay members, as the case may be, of the Diocesan Synod of the Diocese or United Diocese in which such vacancy shall have occurred. Any person elected to fill a casual vacancy shall hold office only so long as the person in whose place he shall have been elected would have held the office if such vacancy had not occurred. The Archbishop or Bishop shall, in every case, summon by rotation, to sit with him in the Diocesan Court, a Clergyman and a Layman from those so elected, to whom, along with the Archbishop or Bishop, or his Commissary, all questions of fact shall be referred: Provided, however, that if both parties shall express their consent in writing, it shall be in the power of the Archbishop or Bishop, or his Commissary, to hear and determine the case alone.

4. The Archbishop or Bishop, as the case may be, shall also from time to time, as occasion may require, appoint a fit and proper person to be the Registrar of the Diocese or

United Diocese, who shall hold office for life, or until resignation, or order of removal by the Archbishop or Bishop.

5. In case of the illness or temporary incapacity of any Chancellor or Registrar, a statement of the circumstances whereof shall be filed in the Registry of the Diocese or United Diocese of which he is Chancellor or Registrar, the Archbishop or Bishop of such Diocese or United Diocese may appoint under his Episcopal seal (which appointment shall be filed of Record) a fit and proper person to act as Deputy Chancellor or Deputy Registrar, as the case may be, of such Diocese or United Diocese during such illness or incapacity; and every person so appointed shall have all the powers and perform all the duties of the Chancellor or Registrar for whom he is appointed to act: Provided always, that every Deputy Chancellor shall be qualified as hereinbefore provided with respect to the Chancellor.

6. Every Chancellor, Deputy Chancellor, Registrar, Deputy Registrar, and elected member of a Diocesan Court, shall, before entering upon the duties of his office, make and sign a declaration in the following form:—

> I, , do solemnly and sincerely declare that I am a member of the Church of Ireland, and that I will faithfully, and to the best of my ability, execute the office of of the Diocese (or United Diocese, *as the case may be*) of , without fear, favour, affection, or malice.

7. The Archbishop, Bishop, or any member of the Church who shall have signified in writing his submission to the authority of the General Synod, having any charge cognisable by the Diocesan Court against any person under the jurisdiction of the said Court, shall present the charge, by petition in writing, signed by him as petitioner, and shall lodge the same with the Registrar of the Diocese or United Diocese in which the person charged, who shall be named as respondent, shall reside or hold office, or in which the offence may be alleged to have been committed: Provided that the petitioner, except in the case of an Archbishop or Bishop, shall be resident within the Diocese or United Diocese, or shall have been personally injured or aggrieved by the act com-

plained of. Such petition shall be in the form set forth in Schedule A hereunto annexed, or as near thereto as the nature of the case will admit.

8. The petitioner or petitioners, except in the case of an Archbishop or Bishop, shall execute a bond to the Registrar of the Diocese, with two sufficient sureties to be approved of by the Registrar, for such reasonable sum, not exceeding £50, as the Chancellor or Registrar shall deem sufficient, binding him or them to pay all such costs and expenses, as he or they may be ordered to pay by the Diocesan Court, or by the Court of the General Synod; or shall lodge such sum with the Registrar as security for the same purpose.

9. The Registrar, within seven days after such bond shall have been executed, or money lodged, shall send a copy of the petition to the respondent, in a registered letter addressed to his residence or last known place of abode; and, after receiving an answer from him, or, if no answer shall in the meantime have been received, after the expiration of fourteen days from the day on which such copy of the petition shall have been so sent, shall lay before the Archbishop or Bishop the petition, and the answer of the respondent, if any, thereto.

10. In all cases where a charge, not involving any question of Doctrine or Ritual, has been presented by petition against any Clergyman, within the jurisdiction of a Diocesan Court, the Archbishop or Bishop shall have power to appoint under his hand and seal a Commission of inquiry, consisting of not less than one Clergyman and one Layman of the Diocese, to be nominated by the Archbishop or Bishop, to take evidence and to report whether a *prima facie* case has been established. Notice of the time and place of each sitting of such Commission shall be given to the parties, who shall be at liberty to attend and to be heard before the same, by themselves, their agents, solicitors, counsel, and witnesses. The witnesses may be examined, cross-examined, and re-examined by the parties, or their agents, solicitors, or counsel, before the Commission. A note of all evidence given at such Commission shall be taken down in writing by one of the members, or under the direction of the Commission, and when so taken down shall

be revised and certified by the members of the Commission to be full and correct, and shall be transmitted, with the report of the Commission, in writing, to the Archbishop or Bishop, and shall be available and admissible as evidence in all subsequent proceedings in the same case. No member of the Commission shall afterwards act as a member of any Court by which the case shall be heard. When the Commission shall have reported, the Archbishop or Bishop, if he shall consider the charge to be vague or frivolous, or that a *prima facie* case has not been established, shall stay all further proceedings upon the petition; in which case he shall state in writing, signed by him, the reasons for his opinion, and such statement shall be deposited in the Registry of the Diocese, and a copy thereof shall forthwith be transmitted to each of the parties. If the Archbishop or Bishop shall not stay the proceedings as aforesaid, within one month from the date of the said report, the case shall proceed as hereinafter provided.

11. In all cases where a charge is to be heard in the Diocesan Court, it shall be the duty of the Registrar to apply to the Chancellor for a citation, who shall thereupon issue a citation under his hand, requiring the attendance of each of the parties before the Diocesan Court, to be held at such time and place as the Chancellor shall in such citation appoint. Provided that the first sitting of the Court shall be held not less than one fortnight nor more than three calendar months after the date of the citation.

12. The Chancellor shall, at the instance of either of the parties, issue letters to persons whose evidence may be needed at the trial, requesting them to attend at such time and place as aforesaid; and, if necessary, requesting them also to bring with them such documents relating to the matters in issue as may be in their possession, power, or procurement.

13. When any witness shall be unable or unwilling to attend, the Chancellor, at any time after the issue of the citation, may appoint, in such manner and on such terms as he shall see fit, a Commissioner to take the testimony of such witness; and such witness may be examined, cross-examined, and re-examined, by the parties, or their agents, solicitors,

or counsel, before such Commissioner. The examination shall be reduced to writing, and signed by the witness and by the Commissioner, and shall be forthwith transmitted by him, under seal, to the Chancellor; and the same shall, without further proof, be available and admissible as evidence in all subsequent proceedings in the same case.

14. The petition, answer, and every other pleading may at any time, by permission of the Court, be amended in such manner and on such terms as the Court shall think fit and necessary for the purposes of justice, provided that the substance of the charge be not varied by any such amendment.

15. If the respondent shall at any time before trial, by writing under his hand, confess the truth of the charge, and consent that the Archbishop or Bishop, as the case may be, shall forthwith pronounce sentence upon him, the Archbishop or Bishop may thereupon pronounce such sentence as he shall think fit, not exceeding the sentence which he might have pronounced if the proceedings had been prosecuted in the ordinary course, or he may send the case by letters of request to the Court of the General Synod, and may make such order as to costs and expenses, including the Registrar's fees and charges, and as to the disposal of the deposit, if any, as he shall think fit.

16. The evidence of all witnesses examined before the Court shall be given *viva voce*, and shall be taken down in writing by the Chancellor, or as the Court shall direct.

17. The Court, after hearing the parties, or such of them as shall appear, their agents, solicitors, or counsel, and the witnesses, shall consider the evidence, and may deliver judgment, which shall be reduced to writing, or shall remit the case to the Court of the General Synod. If the judgment be one declaring the respondent guilty of the offence charged, he, or his agent, solicitor, or counsel, shall have leave to speak in mitigation of punishment before sentence is pronounced. Thereupon, or upon some day, within one calendar month, to be named by the Court, the Archbishop or Bishop, or his Commissary, or his Chancellor, shall, in open Court, pronounce sentence according to law. The Court shall make such order as to costs and expenses,

including the Registrar's fees and charges, and as to the disposal of the deposit, if any, as the Court shall think fit.

18. In every case in which an Archbishop or Bishop shall institute proceedings in his own Diocesan Court, he shall, and in all other cases he may, direct his Chancellor to act in his place; and such direction shall suffice to confer all the jurisdiction of the Archbishop or Bishop on his Chancellor, in such case.

19. It shall be lawful for the Diocesan Court, at its discretion, at any stage of the proceedings before it, to remit the case to the Court of the General Synod; and the case, with the evidence and findings upon matters of fact, if any, shall be sent by the letters of request to the Court of the General Synod, which shall then proceed to hear and determine the case, and shall deliver judgment and pass sentence therein according to law.

20. In all cases where the parties submit, or are bound by the laws of the Church, the Diocesan Court may hear and determine any questions connected with the property of the Church or the administration thereof, or with ecclesiastical rights generally, which may arise between members of the Church of Ireland, if the party defendant be resident within the Diocese or United Diocese in which the Court has jurisdiction.

21. An appeal shall lie to the Court of the General Synod from every judgment and sentence of a Diocesan Court.

22. The Court of the General Synod shall be constituted of three Ecclesiastical and four Lay Judges, except in cases in which the Representative Body of the Church of Ireland is a party, in which case the Court shall be constituted of the three Lay Judges first in order upon the list of Lay Judges elected by the General Synod, as hereinafter provided, who may be able to attend, not being members of the Representative Body.

23. The three Ecclesiastical Judges shall be the three members of the House of Bishops, first in order of precedence, who may be able to attend.

24. The four Lay Judges shall be the persons first in

order upon the list of Lay Judges elected by the General Synod as hereinafter provided, who may be able to attend.

25. No Archbishop, Bishop, or Chancellor, shall sit in the Court of the General Synod for the hearing of any appeal from the Diocesan Court of his own Diocese or United Diocese.

26. Every person, being a member of the Church of Ireland, who holds or shall have held the office of a Judge of the Supreme Court of Judicature, or of the Court of Bankruptcy, or of a Recorder in Ireland, or who, being one of Her Majesty's Counsel, shall have held for five years the office of Chancellor of a Diocesan Court in Ireland, shall be qualified for election as a Lay Judge.

27. An election of ten Lay Judges shall be held in the first ordinary Session of each General Synod: the election shall be held in Synod by voting papers, both Orders voting conjointly. Voting papers containing the names of all the persons qualified as aforesaid, and willing to act, shall, before each election, be prepared, printed, and issued to the voters, each of whom may vote thereon for ten or any lesser number of names, and shall return the same, signed with his name, to the Secretaries in Synod. The names of the ten persons who shall receive the greatest number of votes shall be placed in the order of the number of votes received by each, and shall constitute the list of Lay Judges until the next election shall have been held. In every case of equality of votes, the order of the names shall be determined by lot. The voting papers shall be issued on the second and third days of the Session, and shall be returned before the adjournment of the Synod on the third day of the Session.

28. Every charge involving any question of Doctrine or Ritual shall be cognisable by the Court of the General Synod. Every such charge, unless promoted by an Archbishop or Bishop, shall be preferred by at least four male communicants of full age, who have signified in writing their submission to the authority of the General Synod. Every such charge shall be presented by petition in writing, signed by the person or persons promoting or preferring the same, as petitioner or petitioners, and shall be lodged with the

Registrar of the Court of the General Synod, and shall be in such form, and shall be served upon every person charged and named as respondent, and the petitioner or petitioners therein shall give security for the costs and expenses of the proceedings, in such manner, as shall be prescribed by the Rules of the said Court. The decision of the said Court as to whether the case is one involving any question of Doctrine or Ritual shall be conclusive, and may be required and given at any stage of the proceedings after the charge has been preferred.

29. The Court of the General Synod shall not determine any matter or question which, in the opinion of the Lay Judges, is within the jurisdiction, and more proper to be submitted to the consideration and decision, of a civil tribunal.

30. The decision of the majority of the members of the Court of the General Synod shall be the decision of the Court; but in every case which involves any question of Doctrine, or the deposition from Holy Orders of any Clergyman, the concurrence of two at least of the Ecclesiastical Judges shall be requisite for a judgment adverse to the Clergyman charged, and, in every such case, the sentence shall be pronounced by one of the Ecclesiastical Judges.

31. The Registrar of the Diocese of Dublin shall be also the Registrar of the Court of the General Synod.

32. In all cases where a charge involving any question of Doctrine or Ritual has been presented by petition against any Clergyman within the jurisdiction of the Court of the General Synod, the Archbishop of the Province in which the said Clergyman is beneficed or licensed shall have power to appoint under his hand and seal a Commission of enquiry, consisting of not less than one Clergyman and one Layman, to be nominated by the said Archbishop, to take evidence and to report whether a *prima facie* case has been established. Notice of the time and place of each sitting of such Commission shall be given to the parties, who shall be at liberty to attend and to be heard before the same by themselves, their agents, solicitors, counsel, and witnesses. The witnesses may be examined, cross-examined, and re-examined by the parties, or their agents, solicitors, or counsel, before the

Commission. A note of all evidence given before such Commission shall be taken down in writing by one of the members or under the direction of the Commission, and when so taken down shall be revised and certified by the members of the Commission to be full and correct, and shall be transmitted, with the report of the Commission, in writing to the said Archbishop, and shall be available and admissible as evidence in all subsequent proceedings in the same case. No member of the Commission shall afterwards act as a member of the Court by which the case shall be heard. When the Commission shall have reported, if the Archbishop, and the two persons first in order upon the list of Lay Judges of the Court of the General Synod consenting to act with him, shall consider the charge to be vague or frivolous, or that a *primâ facie* case has not been established, they shall stay all further proceedings upon the petition; in which case they shall state in writing, signed by them, the reasons for their opinion, and such statement shall be deposited in the Registry of the Court of the General Synod, and a copy thereof shall forthwith be transmitted to each of the parties. If the Archbishop and persons aforesaid shall not stay the proceedings as aforesaid within one month from the date of said report, the case shall proceed.

33. Every party appealing from a judgment or sentence of a Diocesan Court shall state the grounds of the appeal in writing, in the form set forth in Schedule B hereunto annexed, or as near thereto as the nature of the case will admit, and shall lodge the same, within fourteen days after the judgment or sentence, with the Register of the Court of the General Synod. The person or persons so appealing shall execute a bond to the Registrar of the said Court, with two sufficient securities, to be approved of by the Registrar, for such reasonable sum, not exceeding £50, as the Registrar shall deem sufficient, binding the appellant or appellants to pay all such costs and expenses of the appeal as he or they may be ordered to pay by the Court of the General Synod, or shall lodge such sum with the Registrar as security for the same purpose. Thereupon it shall be the duty of the Registrar to send a copy of the appeal to the

Archbishops of Armagh and Dublin, and to the member of the House of Bishops next in order of precedence, and shall obtain from the first in order of precedence of the three Ecclesiastical Judges of whom the Court may be constituted an order fixing a time and place for hearing the appeal, and the Registrar shall summon each member of the Court, and the several parties, to attend at such time and place.

34. The Registrar, within one week after the appeal shall have been lodged, shall require the Registrar of the Diocesan Court to return to the Court of the General Synod the petition, the respondent's answer, if any, and any other pleadings, the notes of the evidence taken in the Diocesan Court, and the written judgment and sentence of the said Court, and the Diocesan Registrar shall forthwith return the same accordingly, authenticated by his signature.

35. The Court of the General Synod, having before it the evidence taken in the Diocesan Court, may allow either party to the appeal to produce additional evidence, either orally or taken by a Commission, or by the further examination or cross-examination of witnesses examined before the Diocesan Court. When the parties, or such of them as shall attend upon the appeal, shall have been heard by themselves, their agents, solicitors, counsel, and witnesses, if any, the Court shall deliver such judgment and sentence as the case may require, which shall be reduced to writing, and shall be final.

36. The Court of the General Synod shall have power upon appeal to set aside, vary, or confirm the judgment or sentence of the Diocesan Court, and to direct by whom the costs and expenses of the proceedings, including the Registrar's fees and charges, shall be defrayed or borne, and to dispose of the deposit or deposits, if any, as the Court shall think fit.

37. Any Archbishop, or Bishop, or any member of the Church who shall have signified in writing his submission to the authority of the General Synod, having any charge cognisable by an Ecclesiastical Court against an Archbishop or Bishop, shall present and lodge the same by petition in writing in the Court of the General Synod: Provided that any charge involving any question of Doctrine or Ritual,

unless promoted by an Archbishop or Bishop, shall proceed from at least six male communicants of full age.

38. The petitioner or petitioners, except in the case of an Archbishop or Bishop or Diocesan Council, shall execute a bond to the Registrar of the Court, with two sufficient securities, to be approved of by the Registrar, for such reasonable sum, not exceeding £50, as the Registrar shall deem sufficient, binding him or them to pay all such costs and expenses of the proceedings as he or they may be ordered to pay by the Court; or shall lodge such sum with the Registrar as security for the same purpose.

39. The several Courts hereinbefore mentioned shall be open to the public, unless the Judge or Judges shall deem it expedient to sit in private, on account of the matter of the enquiry, or misconduct of the audience, or any other urgent reason, in which case each of the parties may require that not more than six men chosen by himself shall be permitted to be present.

40. No person who has been either petitioner or respondent in any suit shall act as a member of the Court by which the suit is heard.

41. The Judge or Judges of every Court may from time to time adjourn the Court as they shall deem fit.

42. It shall be the duty of every member of the Church of Ireland to attend and give evidence, when duly summoned to do so, at any trial or investigation held under the authority of the Constitution of the Church.

43. Every person who shall be called as a witness at any trial or investigation held as aforesaid, shall, before giving evidence, make a solemn declaration that he will speak the truth, the whole truth, and nothing but the truth.

44. When the Court shall have signed its judgment or sentence, the same shall be filed of Record in the Registry of the Diocese or of the Court of the General Synod, as the case may be.

45. In any suit or other proceeding before a Diocesan Court there shall be no appeal, without the special leave of the Court, from any interlocutory order not having the effect of a definite sentence, until a definite sentence shall have been pronounced thereon; but when a definite sentence

shall have been pronounced, the party appealing therefrom may also appeal from any interlocutory order or orders in the same case.

46. No bond, given as security for the costs and expenses of proceedings in any Court, shall be put in suit without the leave of the Court.

47. The Court of the General Synod may hear and determine all questions of a legal nature which have arisen, or which may arise, in respect of the proceedings of a Diocesan Synod at any election to fill a vacancy in the office of an Archbishop or Bishop.

48. It shall be in the power of the House of Bishops, or of the General Synod, to refer to the Court of the General Synod, for hearing and determination, any questions of a legal nature, which have arisen, or which may arise, in the course of their proceedings: and the said Court shall thereupon proceed to hear and determine the same in the same manner as in the case of an appeal, or to advise the House of Bishops or the General Synod in respect of the same, as the case may require.

49. The several proceedings of or on behalf of each Court shall be prepared and recorded by the Registrar of the Court in which the case shall be pending, as the case may require.

50. The members of the House of Bishops, with the ten elected Lay Judges of the Court of the General Synod, shall constitute the Rules Committee of Ecclesiastical Tribunals. The Rules Committee or any three members thereof, one being an Archbishop, and one other an elected Lay Judge who holds or shall have held the office of a Judge of the Supreme Court of Judicature, may make Rules for carrying the provisions of this Chapter into effect, and in particular for regulating all matters relating to procedure, practice, costs, expenses, and fees, giving security for costs, the pronouncement of judgments and sentences, the validity of proceedings notwithstanding irregularity or defects of form, proceedings in the case of persons who cannot be found or served, the liability to and recovery of costs and expenses, the forms to be used, and all matters incidental to or connected with the administration of the Ecclesiastical Law

of the Church of Ireland. Every Rule made in pursuance of this section shall be signed by three or more members of the Rules Committee, and shall be presented to the General Synod on the first day of its Session next after the making of such Rule, and it shall be lawful for the General Synod, by a Resolution, to annul such Rule without prejudice to the validity of anything done in the meantime in pursuance thereof; and every such Rule, unless annulled as aforesaid, shall, while unrevoked, be of the same validity as if enacted in this Chapter. Until Rules shall have been made in pursuance of this section, and subject to such Rules when made, the Rules, Orders, Forms, and Fees annexed to Chapter IV. of the Statutes of the General Synod, 1886, shall be the Rules, Orders, Forms, and Fees of the Diocesan Courts and Registries, and the Rules, Orders, Forms, and Fees of the Court of the General Synod, which were laid before the General Synod in the year 1888, shall be the Rules, Orders, Forms, and Fees of the Court of the General Synod and of the Registry thereof.

51. The General Synod may from time to time, by Resolution, regulate and provide for the election and summoning of the Court of the General Synod, and for giving effect to the provisions of this Chapter, as occasion may require.

52. Every act which would have been a breach or violation of the Ecclesiastical Law of the United Church of England and Ireland, and an offence punishable by such law in Ireland, at the time of the passing of the "Irish Church, Act, 1869," and which is a breach or violation of the Ecclesiastical Law of the Church of Ireland for the time being; and also all crimes for the time being punishable by law in Ireland, immorality, drunkenness, conduct unbecoming to the sacred calling of a Clergyman, and all other acts which are breaches or violations of the Canons or other Laws of the Church of Ireland, for the time being, and the teaching or publishing of any doctrine contrary to the doctrines of the Church of Ireland, shall be offences against the Ecclesiastical Law of the Church of Ireland, cognisable by the Ecclesiastical Tribunals of the said Church; and it shall be lawful for such Tribunals to award the same or

similar punishments for such offences, as under the laws in force at the passing of the said Act the Ecclesiastical Courts were competent to decree in respect of the same or similar offences, or such other punishments as are or shall be provided or appointed by the Laws of the Church of Ireland for the time being.

53. The said Ecclesiastical Tribunals shall be at liberty to accept lawful proof of a conviction in any of the Queen's Temporal Courts for treason, felony, or misdemeanour, or of any finding, judgment, or order of any such Temporal Court, in any criminal or civil proceeding, establishing or founded upon the fact of any immoral act, immoral conduct, or immoral habit, as sufficient evidence of such crime or fact; provided such conviction, finding, judgment, or order, shall not in the meantime have been reversed or set aside, and that more than two years shall not have elapsed since the date of the said conviction, finding, judgment, or order.

54. It shall be lawful for the Ecclesiastical Tribunals to receive in evidence statutory declarations of witnesses, but upon such terms, if any, as to requiring the cross-examination of the witnesses either before the Court itself or by Commission or written interrogatories, or as to allowing such declarations to be answered, as may be directed by the Court or prescribed by Rules framed in pursuance of this Chapter.

55. If any accused person shall be adjudged by the Diocesan Court, or by the Court of the General Synod, to be guilty of an offence cognisable by the Court, the Court shall proceed to pass sentence in accordance with the provisions of this Chapter.

56. The Diocesan Court shall have power to pronounce sentence of admonition, or of suspension *ab officio* or *a beneficio*, but not of deprivation or of deposition from Holy Orders, subject, in all cases, to appeal to the Court of the General Synod; and shall have power to inhibit any person charged from the exercise of his office *pendente lite*, or pending any appeal.

57. The Court of the General Synod shall have power to pronounce sentence of admonition, or of suspension *ab officio* or *a beneficio*, or of deprivation, or of deposition from Holy

Orders, subject to the provisions of section 30; and shall have power to inhibit any person charged from the exercise of his office *pendente lite.*

58. Every Diocesan Court, and the Court of the General Synod, shall have power to order that a suspended Clergyman shall not reside in the Glebe House, or retain possession of the Glebe lands, during suspension, and that he shall deliver up all books, keys, and other property held by him in virtue of his office, to the Churchwardens, or to such other person or persons as the order may appoint to hold such property for or on behalf of the Representative Church Body.

59. Disobedience to any sentence or order of any Ecclesiastical Tribunal shall constitute a distinct offence, on proof whereof such sentence may be pronounced as the Court shall think proper, including, in the case of the Court of the General Synod only, a sentence of deprivation.

60. It shall be lawful for every Ecclesiastical Tribunal to order that any moneys payable as stipend to a suspended Clergyman shall be sequestered, for such period and subject to such conditions as the Court may think fit; whereupon all such moneys shall, subject to the order of the Court, become payable and be paid to the Diocesan Council of the Diocese of such Clergyman, which shall receive and administer the same as the Court shall direct, or, in the absence of such direction, as the said Council shall think just.

61. It shall be lawful for any person convicted of any crime by the Court of the General Synod, or aggrieved by any judgment, sentence, or order of the said Court, at any time within one year next after the date of such judgment, sentence, or order, to present a petition to the said Court praying that the case may be reheard upon grounds to be set forth in such petition, and praying that the judgment, sentence, or order may be set aside or varied; and thereupon it shall be lawful for the said Court, or any two members thereof, one being a Judge of the Supreme Court of Judicature in Ireland, upon just and reasonable grounds, to order that the case shall be reheard by the said Court, and such rehearing shall take place when and as the said Court shall direct. Provided that the said Court or such

members thereof may impose such terms, by way of security for costs and expenses, and by way of admissions or otherwise, as shall be deemed just and proper.

62. The Archbishops and Bishops of the Church of Ireland shall have, and may use, all the same powers of granting licences, dispensations, faculties, and other writings which they had and might have used at the time of the passing of the "Irish Church Act, 1869." Provided that every person considering himself aggrieved by the granting or withholding of any faculty, except in the case of the granting or withholding of a faculty for ordination, shall be entitled to have his case heard and determined by the Diocesan Court, or may appeal to the Court of the General Synod.

63. Every Rector, Vicar, Incumbent, or Curate, who shall have the custody for the time being of any Register Books of Baptisms, of Marriages, or of Burials, shall at all reasonable times, on demand, make search in any such Register Book, and shall give a copy certified under his hand, of any entry or entries in the same, on payment of the fee hereinafter mentioned; that is to say, for every search extending over a period of not more than one year, the sum of One Shilling, and Sixpence additional for every additional year, and the sum of Two Shillings and Sixpence for every single certificate: Provided that nothing herein contained shall be taken to invalidate the established usage in any Parish as to the amount properly payable for any such search or certificate, during the tenure of office of any person who was entitled on April 30, 1881, to receive the same.

64. If any Layman shall have been convicted and sentenced, by any of the Queen's Temporal Courts, for any criminal offence, or shall be a fugitive from justice in any case in which a warrant has been issued for his apprehension, or shall have ceased to be a member of the Church of Ireland, or shall have been found lunatic, or placed under lawful restraint as a person of unsound mind, or shall wilfully and without sufficient cause have neglected or refused to attend and give evidence when duly summoned to do so at any trial or investigation held under the authority of the

Constitution of the Church, the Archbishop or Bishop of the Diocese, with the advice of his Chancellor, may, by order under his hand and seal, declare any office in the Church of Ireland to which such Layman may have been elected or appointed, to be vacant, and the same shall thereupon be filled in due course, as if the Layman aforesaid had died.

APPENDIX B.

CONSTITUTION OF THE CHURCH OF IRELAND. 1889.

CHAPTER XII.

MANAGEMENT OF BURIAL GROUNDS.

1. The care of all Burial Grounds vested by the Commissioners of Church Temporalities in the Representative Body is hereby entrusted to the Ministers and Churchwardens of the several Churches to which the same are respectively annexed, but subject to the control of the Representative Body; and in order to the protection of same, the Minister and Churchwardens may prevent trespass, or other unlawful use of, or interference with the same, and act on behalf and in the name of the said Representative Body in any proceedings requisite for the purpose. But all costs and expenses incurred by such proceedings shall be paid by the said Minister and Churchwardens to the Representative Body, and in case the Select Vestry shall have approved of such proceedings shall be charged to the account of the Parish.

2. In every case where there is a road or avenue specially appropriated by deed or otherwise to any such Burial Ground, the care and protection of the same is hereby entrusted to the same parties as by this Chapter are charged with the conservancy of the Burial Ground itself.

3. Where, by faculty or prescription, the members of a family have acquired a right to be buried in a particular place in any such Burial Ground as aforesaid, such right shall

in conformity with the provisions in that behalf of the "Irish Church Act, 1869," be acknowledged, and effect shall be given to the same by the Minister and the Churchwardens charged with the care thereof.

4. When members of a family have been buried in a particular place, although it may not have occurred in the exercise of a right, the Minister and Churchwardens shall nevertheless guard against interfering with such use of such place, unless on grounds of imperative public convenience or necessity.

5. Except in cases where such right or user exists, the Minister and Churchwardens shall determine the place of sepulture.

6. No corpse shall be buried within 12 feet of the fabric of the Church, except in a vault hitherto lawfully used for sepulture, and having its sole entrance from outside the walls, or in a vault or substantially built enclosure adjacent thereto, which at present exists.

7. No corpse shall be disinterred or removed, except on a warrant from the Coroner or other authorised officer, or by the authority of a faculty from the Bishop's Court.

8. The Select Vestry of the Church to which the Burial Ground is annexed shall appoint a grave-digger, who shall be entitled to such reasonable fee as the Select Vestry may appoint for digging a grave, unless the same be otherwise provided for, with the consent of the Select Vestry.

9. The Minister and Churchwardens shall have power to permit headstones, flatstones, railings, and vaults to be erected and made; and shall be entitled to charge such fees for the erection of the same, and for burial in such vaults, and in those already made, and in graves, respectively, as the Select Vestry shall appoint, with the consent of the Diocesan Council; and provided that no inscriptions be allowed upon such erections unless previously approved of by the Minister, with an appeal to the Ordinary.

10. The Select Vestry of each Church shall fix a scale of fees for mural tablets; but in case of leave to erect monuments being applied for and given, pursuant to the Canon in that behalf, the Select Vestry shall fix on each occasion the fee to be charged for the permission.

11. All fees receivable under this Chapter, except the grave-digger's fees shall be received by the Minister and Churchwardens, or such person as they shall authorise, and shall be expended in keeping the Church and Burial Ground in good order and repair, and any surplus shall be applied by the Select Vestry to such use as they may think fit, subject to the provisions of Chap. iii., sec. 20, preceding, and all such receipts and expenditure shall be accounted for by them to the Representative Body.

12. In case of Cathedrals, not having Churchwardens, but having Cathedral Boards or Cathedral Select Vestries, such Cathedral Select Vestries shall, as to such Cathedrals and the Burial Grounds attached thereto, have and exercise all the same duties, powers, and authorities as are hereby assigned to Churchwardens; and for the purposes of this Chapter the Deans, or, in their absence, the Sub-Deans, of such Cathedrals shall be considered to be the Ministers thereof.

13. Provided always that any person aggrieved by the refusal of the Ordinary, Minister, Churchwarden, or the Select Vestry, or otherwise, in the premises, shall have the right to appeal to the Diocesan Court, which Court shall have full authority to hear and determine such appeal; and an appeal from said Court shall in all cases lie to the Court of the General Synod, which shall have full authority to hear and determine the same.

14. Nothing in this Chapter contained shall be taken to interfere with any right existing on the 17th of May, 1873.

APPENDIX C.

TABLE OF CASES HEARD IN COURT OF GENERAL SYNOD.

		Reported in Journal.
1.—1885.	*Re* Meath Episcopal Election. Right of Diocesan Synod to submit the names of *three* clergymen to the Bench of Bishops. Case from Bishops on Constitution, chap. vi., . . .	1886, p. 169
2.—1886.	*Re* Precedence of Bishop of Meath. Case from Bishops. *Held*, Bishop of Meath is entitled to precedence next after Archbishop of Dublin, . . .	1886, p. 176
	Of course this decision on the Church Statutes related to Ecclesiastical precedence in the Church of Ireland. Civil and social precedence depends on rules made by the Queen. The rule of 26th March, 1885, which gives Bishops of the Church of Ireland and of the Roman Church precedence before Barons also declares that they shall take rank *inter se* according to the dates of consecrations, see rule in *Journal*,	1886, p. 176

		Reported in Journal.
3.—1888.	Legality of Grant to a Divinity School in connection with the Church of Ireland. Case from General Synod, . . .	1888, p. 158
4.—1888.	Diocesan Nominators. Court refused to consider the question, no parties appearing to argue same. Case from General Synod,	1888, p. 160
5.—1888.	Effect of resignation of his benefice by Archdeacon on retainer of Archdeaconry. Case from Bishops, ...	1888, p. 161
6.—1890.	M'Keown *v.* Irwin, Clk. Letters of request from Diocesan Synod, Immorality of Clerk. Sentence, suspension for three months.	1895, p. 202
7.—1892.	Brown *v.* Creagh. Election of Incumbent, ...	1895, p. 203
8.—1892.	Grant *v.* Smith. Appeal from Diocesan Court on Canon xxxvi, Cross on structure behind Communion Table declared illegal.	1895, p. 204
9.—1893.	M'Loghlin *v.* Diocesan Synod of Cashel, ... *Held*, Synod had power to rescind a resolution.	1895, p. 215
10.—1893.	Ross *v.* Macdonagh, Clerk. Letters of request from Diocesan Synod, Drunkenness. Scandal. Sentence of Deprivation.	1895, p. 216
11.—1894.	Campbell *v.* Hunt, Clk. Doctrine contrary to Articles.	1895, p. 217

APPENDIX D.

REPORT OF THE STANDING COMMITTEE TO GENERAL SYNOD ON MARRIAGE LAWS.

On 14th April, 1893, the following resolution was adopted by the Synod:—

> "That the Standing Committee be requested to prepare and present a petition to the House of Commons setting forth the anomalous position of the Clergy of the Church of Ireland in the matter of the Marriage Laws, and to take such other steps as they may think expedient."

It was not found possible to carry out the intention to have a Petition presented to Parliament, as the Committee of the House of Commons, which was sitting when this resolution was passed, very shortly afterwards concluded its labours; but the entire matter, together with important questions with reference to the marriage of divorced persons, was referred to the Legal Committee.

Mr. Justice Holmes, Mr. Justice Gibson, and Mr. Justice Madden were requested to act with the Legal Committee in the consideration of these matters.

The Standing Committee having referred to their Legal Committee the resolution of the General Synod of 1893, relating to alleged anomalies in the Marriage Laws, with

certain queries addressed to the Standing Committee on the subject, the Legal Committee report as follows :—

It has been suggested :—

> 1. "That the Clergy of the Church of Ireland are required to make quarterly returns without fee or reward, whilst in England the Clergy are paid for this service."

This complaint is well founded. By 7 & 8 Vict. c. 8, s. 65, Clergymen of the Irish Church and Presbyterian Ministers, and by 26 & 27 Vict. c. 27, s. 9, the Ministers of the other denominations (save Roman Catholics) are required four times in each year to send copies, certified under their hands, of every entry made within the quarter in the Marriage Register Books which they are bound to keep. No fee for this duty is provided. Similar duties are cast on the English Clergy by 6 & 7 Wm. IV. c. 80, ss. 31–33; but by 7 Wm. IV. & 1 Vict. c. 22, s. 27, a fee of sixpence for each entry is paid to the Clergyman by the Marriage Registrar of the district, for which he is reimbursed by the Poor Law Union. By 26 & 27 Vict. c. 90, s. 11, in case of all marriages in Ireland not within the 7 & 8 Vict. c. 81, or any Act amending the same, the parties are required to procure a Form of Certificate from the Registrar, before the marriage, and they and the Clergyman are bound to sign it, but the *husband* only is bound under penalty to post it to the District Registrar. This section applies to Roman Catholic marriages. We understand that it is not generally complied with, and that Roman Catholic Clergymen have very generally taken on themselves to forward certified entries to the Registrar without remuneration.

The Legal Committee suggest that a fee of one shilling per entry should be paid to all Clergymen or Ministers making certified returns. This fee is provided for the Registrar for each entry made by him in the Marriage Notice Book, and for each Certificate of Notice given by him under 7 & 8 Vict. c. 81, ss. 14 and 16. As the marriages annually registered in Ireland do not exceed 21,000, the total required to cover the proposed fee would be about £1000 a year, which might be provided for either as part of

the expenses of the Registrar-General's Department, under 7 & 8 Vict. c. 81, s. 54, or defrayed out of local rates. One shilling in Ireland would not be unreasonable, as compared with sixpence in England, where the Church is established.

> 2. "That whilst Roman Catholic Bishops can issue Episcopal licenses without paying duty, the Bishops of the Church of Ireland and the authorities of the other denominations are charged a £5 stamp duty."

The stamp duty is imposed by 33 & 34 Vict. c. 97, Schedule, upon special licenses only; it is charged in England also. No duty is charged on ordinary licenses, nor where marriages are solemnized under the other statutory authorizations provided by 7 & 8 Vict. c. 81; 26 & 27 Vict. c. 27; 33 & 34 Vict. c. 110. Marriage licenses by Roman Catholic Bishops are not governed by statute, and are not liable to any duty to the Crown; the dues payable upon Roman Catholic marriages are regulated only, it is to be remembered, by Roman Catholic ecclesiastical law and custom. It appears anomalous that members of Protestant denominations should be obliged to pay duties to the Crown from which Roman Catholics are exempt.

> 3. "That whilst Church of Ireland Clergymen authorized to issue licenses must give notice to the clergy of the other denominations in cases of mixed marriages, the latter, whether Presbyterian, Roman Catholic, or Nonconformists, are not required to give notice to them."

This matter needs a somewhat full explanation. By 33 & 34 Vict. c. 110, s. 34, the Bishops of the Irish Church are empowered to nominate persons (not necessarily Clergymen) to issue licenses for marriages where both parties belong to the Church; and such licensing persons are required to send a copy of the marriage notice given to them *to the Clergymen of the Churches the parties habitually attend.*

By the 38th section a marriage may be solemnized by a Church of Ireland Clergyman, where one party only belongs to the Church; or by a Roman Catholic Clergyman, where

only one is a Roman Catholic. In either case a notice is to be given to the Registrar, as under the Acts of 1844 and 1863, whose duty is (26 & 27 Vict. c. 27, s. 3) to send a copy by registered letter to the Minister of the Church or place of worship which the parties to the marriage *or either of them* usually attend; but as sending the notice to one place of worship suffices, there is no obligation to send it to that of the party not of the religion of the officiating Clergyman.

By 7 & 8 Vict. c. 81, each Presbytery can appoint a Minister to grant marriage licenses within his Presbytery, where both *or one* of the parties is a Presbyterian; and there is no obligation to send a copy of the Notice of Marriage to the Church of the non-Presbyterian party.

By 26 & 27 Vict. c. 27, ss. 2 and 3, in case of all marriages (other than Roman Catholic, or Church of Ireland, or Presbyterian) by banns or license, marriage notices must be given to the Registrar, who, as above stated, must send a copy to the Minister of the place of worship which the parties, *or either of them*, usually attend, but with no obligation, as already stated, to send to more than one.

In the opinion of the Legal Committee, the above anomalies might be removed by a simple provision that in all cases of mixed marriages within the above cited Acts of 1844, 1863, 1870, and 1871, the Marriage Notice should necessarily be given to the Registrar, and that it should be his duty to send a copy by registered letter to the Clergyman of the place of worship which *each* of the parties usually attends.

> 4. "That Presbyterian licensers may license to marry in any Presbyterian meeting-house within his Presbytery, whether the parties attend the meeting-house in which the marriage takes place or not; whilst Church of Ireland licensers can only license for marriage in a church in the parish of which one of the parties resides."

This statement is not quite accurate.

The Presbyterian licenser, by 7 & 8 Vict. c. 81, s. 8, may grant licenses to marry in any Meeting-house within his Presbytery, and it is sufficient under sect. 9, if either of the

parties have resided for fifteen days before the grant *within the Presbytery*, which of course may contain many Meeting-houses: but, by sect. 10, the person seeking the license must personally appear before the licenser seven days before the grant, and *produce a certificate from the Minister of the Congregation to which he or she has belonged for at least a month previously, and which certificate must show the residences of both parties and the congregation to which each belongs.* (Form D.)

By 33 & 34 Vict. c. 110, s. 35, the Bishops of the Church of Ireland, when nominating marriage licensers, are to define the districts within their respective Dioceses within which the licensers are to act; and licenses may be issued by the licenser for marriage in any specified Church or authorized Chapel within his defined district, provided that [in all such cases, it is necessary—

First, that the party giving notice of the intended marriage shall have dwelt for not less than seven days next preceding *in the district of the person issuing the license.*

Secondly, that one of the parties shall, for not less than fourteen days immediately before the day of the grant of license, have had his or her usual place of abode *within the district attached, for the purpose of celebration of marriage, to the Church or Chapel in which the marriage is to be solemnized.*]*

The Legal Committee do not consider that this complaint discloses any substantial grievance.

> 5. "A certificate of banns published in Ireland has been refused in England. Is this refusal unlawful?"
>
> "Are banns legal when one of the parties is in England?"
>
> "If marriage can be by banns only in case both parties reside in the country—England, Ireland, or Scotland—where the marriage is to take place?"

The Legal Committee are of opinion that banns published, according to the rubric in the Book of Common Prayer, in the Irish and the English Parish Churches where

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*The words between brackets were introduced by the Standing Committee by way of amendment, June, 1895. (See Matheson's Digest, 58.)

the parties respectively reside are in all respects lawful, and should be recognised by English and Irish Clergymen, respectively. But, in case of refusal, it would be difficult, if not impossible, to compel a Clergyman to recognise banns published in another country.

The case of a marriage in an Irish Parish Church on banns published therein, and in the English Parish Church of the other party, is not, however, regulated by precisely the same statutes which apply to a marriage in an English Parish Church on banns published therein, and in the Irish Parish Church of the other party.

By the old ecclesiastical, which was part of the common, law, a binding marriage needed only to be solemnized by, and in the presence of, a Clergyman. Banns were imposed by canonical law to secure publicity of marriage "*in the face of the Church.*" The Prayer Book, made by statute part of the common law, adopted the system by its rubric, providing that the banns are to be published in the Parish Church of each of the parties, but without other local limitation.

Previous to Disestablishment, the Irish Marriage Act expressly recognised marriages by banns published according to the rubric; and as the Churches were united by the Act of Union, English Parishes were of course recognised in Ireland as within the rubric.

The Irish Church Act of 1869, which dissolved the statutory union, came into force in January, 1871; but in August, 1870, the 33 & 34 Vict. c. 110, *expressly passed to meet the coming changes*, enacts (sect. 32) that marriages between Protestant Episcopalians (defined by sect. 4 to mean members of the Churches of England or Ireland, or of the Scotch Episcopal or any other Protestant Episcopal Church) may continue to be solemnized in any Church in which marriages according to the rites of the United Church of England and Ireland could then (1870) be lawfully solemnized, and in which Divine Service according to such rites should continue, or in any Church afterwards duly licensed under the Act; and by sect. 33 marriages in such Churches must be preceded either by license or Registrar's certificate, *or by banns, published in the manner, and according to the rules, then* (1870) *in force in Ireland in relation to the publication of*

banns in Parish Churches of the United Churches of England and Ireland. These rules, as then existing, fully recognised for a marriage in Ireland banns published in the English Parish Church of the party resident in England. The old mode of publication seems thus unquestionably to be retained in Ireland.

In England, before Disestablishment, "banns" were recognised and regulated by 4 Geo. IV., c. 76, which required, by section 2, that they should be published in the form prescribed by the rubric *in the Parish Church or in some public Chapel in which banns "may now* [1823] *or may hereafter be lawfully published,"* and wherein the parties dwell; and if the parties shall dwell in different Parishes or Chapelries, the banns shall be published in the Church or in any such Chapel as aforesaid belonging to such *Parish or Chapelry wherein each* of the parties shall dwell; and the marriage must be had in one of the Churches in which the banns were published. This Act is still in force. It extends to England only; but before the Irish Church Act, where the marriage was had in the English Parish Church, an Irish Parish Church seemed clearly within the above section, and, as the Committee understand, was always in practice so recognised. Since 1870 the Irish Parish Churches and Chapels mentioned in the already cited sections of 33 & 34 Vict. c. 110, are expressly made Churches or Chapels wherein banns, according to the rubric, may be lawfully published, and, therefore, seems within the very words of the 2nd section of Geo. IV., c. 76, as Churches, &c., *in which banns may hereafter* [1823] *be lawfully published,* being so made by an express enactment of the United Parliament.

6. "Can special licenses be granted when one only of the parties is a member of the Church?"

The Legal Committee answer in the negative. By 33 & 34 Vict. c. 110, sec. 36, the Irish Bishops are empowered to grant special licenses to marry at any convenient time in any place within their episcopal superintendence "*where both the parties are Protestant Episcopalians.*" There is a similar limitation in case of special licenses granted by the Modera-

tor of the General Assembly, and other heads of dissenting bodies, under section 37. By the amending Act of the following year, 34 & 35 Vict. c. 49, s. 26, the persons empowered "*to issue licenses*" under 33 & 34 Vict. c. 110, may issue licenses where one of the parties only is a Protestant Episcopalian ; but the Legal Committee is of opinion that this provision refers only to ordinary licenses under the 35th section of 33 & 34 Vict. c. 110.

> 7. "When notice of marriage is given to one licenser under 33 & 34 Vict., c. 110, s. 35, can the license be granted by another licenser in the same district?"

The words of this section show that the license is to be granted by the person to whom the notice has been given.

> 8. "What period of residence should be required by the Clergy before the publication of banns? Is a period of three months requisite, or, if not, what period is necessary or desirable?"

The Common Law of the Church did not specify any conditions of residence in case of banns, other than those implied by the rubric to the Form of Solemnization of Matrimony, in the Prayer Book. The rubric requires that the banns must be asked in the Parish in which the parties to be married *dwell*, or, if they *dwell* in divers Parishes, then in each of such Parishes. The parties must, therefore, be resident in such Parish or respective Parishes when the banns are first asked, and during the whole period over which the publication of banns extends.

Canon 52, which was in force in Ireland in 1870, forbade any minister to celebrate matrimony upon banns, except published "in the parish churches and chapels wherein the parties have dwelled by the space of three months before." This Canon was not re-enacted by the Constitution of the Church of Ireland, chap. ix., which provides that the Canons therein enacted, "*and none other*," shall thenceforth have effect. But the Marriage Act of 1870, sect. 33, provides that publication of banns shall be made in the manner and according to the rules then in force in

Ireland. The result is doubtful, but it seems probable that the Minister is no longer liable to censure for neglecting to observe Canon 52.* The validity of the marriage would not be affected where actual *bona fide* residence existed before the publication of banns, but a period of three months, even if not essential, is a convenient test of such residence.

> 9. "A question was also raised as to whether it was desirable to bring in a Bill to amend the old Canon Law restricting the hours for the solemnization of marriage, so as to bring it into conformity with recent Statute Law, viz., from 8 a.m. to 2 p.m."

Canon 52, above referred to, which formerly restricted the hours, is no longer in force. They are now fixed by the Marriage Act, 1870, sect. 33, and it is doubtful how far the General Synod can alter the rules sanctioned by that Statute.

Minute of Standing Committee, 18th October, 1894.

> "That the Committee on Marriage Laws be requested to report as to the marriage of divorced persons, and specially as to the following points:—
>
> "1. Power of Bishop as to issue of ordinary license by his Registrar.
>
> "2. Duty of Clergyman to perform the service on the production of a license.
>
> "3. Obligation of a Clergyman to allow the use of his Church by another Clergyman."

The three subjects referred to in this Minute are dealt with in the following opinion:—

Before Disestablishment, the law made it obligatory on Clergymen of the United Church to celebrate the marriage service between persons not disqualified from marrying each other, who presented themselves, having fulfilled the necessary canonical or statutory conditions as to banns, license, or notice to Marriage Registrar, and residence. This obligation is recognised by the Irish Marriage Act, 1844 (7 & 8 Vict. c. 81), section 1 enacting that every person in Holy Orders *of the United Church of England and Ireland shall be bound to solemnize marriage* on the production of the Regis-

* See *ante*, p. 77.

trar's certificate provided by that Act, in like manner as he is required by any law or canon now in force after publication of banns. The English Divorce Act, 1857 (20 & 21 Vict. c. 85, sect. 57), enacted that, after dissolution of a marriage in pursuance of that statute, it shall be lawful for both parties to marry again *as if the prior marriage had been dissolved by death*; provided that no clergyman in Holy Orders *of the United Church of England and Ireland* should be compelled to solemnize the marriage of a person so divorced, upon the ground that he or she has committed adultery; but section 58 enacted that any Minister of any Church or Chapel of the *United Church of England and Ireland* refusing to perform the marriage service in such case should permit any other Minister in Holy Orders *of the said United Church*, entitled to officiate within the Diocese, to perform such service in such Church or Chapel. This enactment implies an obligation to perform the service in every case except that of the person guilty of adultery, and, even in that case, to permit another Minister to perform it.

In Ireland, in cases of divorce by private Statute, no distinction is made between the guilty and innocent parties, and both are enabled to marry again, unless the Statute otherwise provides.

By the Irish Church Act, 1869, section 2, the statutory union between the Churches of England and Ireland was dissolved, and the Irish Church ceased to be established by law after 1st January, 1871; but the Matrimonial Causes (Ireland) Act, 1870 (33 & 34 Vict. c. 110), passed after the Church Act but before it became operative, provides (sect. 32) that marriages between Protestant Episcopalians may be solemnized in any Churches in which they then (1870) might lawfully be solemnized according to the rites of the United Church, and in which Divine Service according to those rites should continue, or in any Church thereafter licensed by the Bishop under this Act; and (sect. 33) that marriages in such Churches shall be preceded either by (1) banns according to the existing rules; (2) license or special license; or (3) certificate of the Registrar under the Marriage Act of 1844. It then enacts that the provisions of the Irish Marriage Act, 1844, applicable to persons in Holy Orders of

the United Church, shall be in force with respect to the celebration of marriage by any Clergyman having authority to officiate, or who shall be permitted to officiate, in any of the aforesaid Churches.

The Committee is of opinion that both the obligation and the protection of the English Divorce Act, 1857, apply to Clergymen of the Church of Ireland, at least until altered by Statute of the General Synod, and, therefore, that there is still an obligation on Irish Clergymen to solemnize the marriage of a divorced person, who has fulfilled the conditions as to banns, license, or Registrar's certificate, or to permit other Clergymen to do so in their Churches.

The Archbishops and Bishops have a discretion as to granting special licenses, and, therefore, may refuse in the case of divorced persons. In the case of an ordinary license, if the person authorized by the Archbishop or Bishop, under the 35th section of the Act of 1870, refuses to issue it, there is an appeal to the Archbishop or Bishop. It would appear undesirable to refuse to issue an ordinary license, where the parties have the legal right to be married by banns.

Other Churches in Ireland are free from any obligation as to the marriage of divorced persons, the Roman Catholic Church being absolutely free, whilst, in the case of Irish Protestant Dissenters, the 26 Vict. c. 27, sect. 13, provides that no marriage can be solemnized in any of their places of worship without the consent of the Minister or of one of the trustees or owners, deacons, or managers thereof. The corresponding English Statute affecting English Nonconformists (19 & 20 Vict. c. 119, sect, 11) has a similar provision.

These Statutes may afford ground for asking from Parliament similar freedom in the case of the Irish Church, if necessary. But it is at least questionable whether the General Synod could now lawfully enact that no marriage of a divorced person should be solemnized in any Church vested in the Representative Church Body. As such persons are, by Statute law, competent to marry again, the Committee could not advise the passing of a Church Statute prohibiting the solemnization of their marriage in Church.

APPENDIX E.

PARTICULARS OF THE REVISION OF THE BOOK OF COMMON PRAYER.

The Church of Ireland, startled at the progress in the Church of England of Ritualistic practices imitated from the Church of Rome, and of doctrines inconsistent with the principles of the Reformation, and alarmed at the schism in which so many distinguished members of the United Churches had gone over to Rome—

> *η μυρί' Αχαιοῖς ἄλγε' ἔθηκε*
> *πολλὰς δ' ἰφθίμους ψυχὰς Ἄϊδι προΐαψεν*
> *ἡρώων—*

and having settled the constitution of the Disestablished Church, proceeded to consider the Revision of its Prayer-book and Formularies. Doubtless there were some few disloyal men ranged on both sides of the controversy, but the determination of the great majority of every order of the Church was emphatically conservative. Their object was not change, but security against change, dissension, and schism. Speaking with intimate knowledge, the writer, as a member of the Synod and of the Revision Committee, can state with confidence that it was the mind and desire of the Church generally not to make any alteration which could lead any loyal and fairly intelligent member to lapse into schism from the Church of Ireland. In 1887 when Revision had been closed and all the canons made law, the Vicar of

St. Bartholomew, in the Diocese of Dublin, preached a sermon in which he states: "I do not believe anything has been done which would justify me in resigning; so I propose to obey," and he has continued for 18 years Vicar of the Parish.

The Revision Statutes were the result of the Reports of two Committees—were twice carried by majorities of two-thirds of clergymen and laymen in consecutive years, without objections from any Diocesan Synods, and only on two occasions did the Bishops exercise the power of voting in a minority against an alteration. The subject seems settled for a long time to come. Sometimes a few zealous men, *rari nantes in gurgate vasto*, have proposed, or rather suggested, further alteration; but the matter has been seldom discussed, and was generally disposed of in an amicable spirit by the previous question being carried without a division.

The Revision Acts are to be found in the Statutes of the Synod and the Journals for the years 1871–1877.

The following are the particulars in which the Revised Prayer-book of the Church of Ireland differs from that of the Church of England as stated in Dr. Ball's "History of the Reformed Church of Ireland":—

"I. In the Prefaces, a new Preface is inserted, and the dates are put to the former Prefaces. The entire of the Addendum to the Preface which is entitled, 'concerning the Services of the Church,' and which is in fact a Rubric, has been omitted. This takes away the direction that 'all Priests and Deacons are to say daily the Morning and Evening Prayer either privately or openly, not being let by sickness or some other urgent cause.'

"II. The direction how the Psalter is to be read is placed at the head of the Psalter; the order how Holy Scripture is appointed to be read is, in some respects, altered: and the Lectionary which follows varies from the English, principally by omitting all Lessons taken from the Apocrypha, and by inserting additional Lessons from the Apocalypse.

"III. After the Table of Vigils, &c., there is inserted power for the Archbishops and Bishops to appoint Days of Humiliation, and Days of Thanksgiving, to be observed by

the Church of Ireland, and to prescribe special services for the same. Here also there is introduced a Note on the Golden Numbers.

"IV. In the Order for Morning and Evening Prayer, in the title, the words 'to be said and used,' before 'daily,' are omitted; also the direction as to dress is omitted. [This has been regulated by Canon 4, page 39, *ante*.] Then are introduced powers, to enable selections from the Services, with approval of the Ordinary, to be used; and also for the use of the Morning and Evening Prayer, the Litany, and the Order for the Administration of the Lord's Supper, as separate Services, or in any combination, subject to the control of the Ordinary. And if the use of full Services be found seriously inconvenient, the Ordinary may dispense with one or more of them. With his permission a sermon may, on special occasions, be preached without the use of morning or evening prayer, some prayers from them being used. The Archbishops may vary the prayers relating to the Royal family. It is explained that though all things set forth are to be read or sung in the English tongue, this is not to prevent the Irish language, or any other the people may understand better, being substituted.

"V. In the Order for Morning Prayer, the cxlviii. Psalm (*Laudate Dominum*) is introduced as an alternative to the *Te Deum* or *Benedicite*. When the Litany is said, the Lord's Prayer and three versicles after the Creed may be omitted.

"VI. The Rublic directing the use of the Athanasian Creed is omitted; and the Creed remains without alteration, but with no direction as to its use.

"VII. There is a new Rubric before the Litany directing what is to be read with it, when it is read either as a separate Service or in combination with the Communion Service.

"VIII. In the occasional prayers and thanksgivings there is introduced from the Service for the 20th June a prayer for Unity; also the following new prayers—(1) for a sick person; (2) on the Rogation days; (3) on New Year's Day; (4) for Christian Missions; (5) for the General Synod while it is in Session; (6) for use in Colleges and Schools; (7) a thanksgiving for recovery from sickness. The prayer for use in time of plague, &c., is altered in some respects; so also is the

prayer for Parliament, in which for the words 'most religious and gracious Queen' are substituted the words 'our Sovereign Lady the Queen.'

"IX. In connexion with the Collects, Epistles, &c., there are three Rubrics providing, among other things, for the case of a holyday falling upon a Sunday. If on Christmas Day or Easter Day there are two celebrations of the Holy Communion, a new Collect, Epistle, and Gospel are provided, which may be used at the first. For the Sunday after Easter Day there is a new Epistle.

"X. In connexion with the Order for Administration of the Lord's Supper the preliminary Rubric is altered in some respects; so also are the Rubrics before the Offertory. In the Offertory sentences the two which were taken from Tobit are omitted. The Rubric about the collection of the Offertory is altered, in order to enable it to be before the sermon. In the Nicene Creed, in the words, 'I believe in the Holy Ghost, the Lord and Giver of Life,' a comma has been inserted after Lord, to bring the sense more to the Greek form, viz. *τὸ Πνεῦμα τὸ ἅγιον, τὸ κύριον, καὶ τὸ ζωοποιὸν.* The Rubric before the exhortation to those who come to the Communion contains an insertion of the words, 'those who do not intend to communicate, having had opportunity to withdraw.' The exhortation is slightly altered. It may be omitted at the discretion of the minister (the consent of the Ordinary having been first obtained), but provided that it shall be read once a month at least, and at all great festivals. In the Rubric before the prayer of consecration the words 'standing at the north side of the table' have been introduced. At the end of the office some additional Collects are introduced; one of which may be used after the Offertory when 'the prayer for the Church Militant' is not read. In the Rubrics which follow these Collects provisions are added which enable the minister to dispense with the 'prayer for the Church Militant,' prohibit the administration of the Communion unless two at the least are present, and permit on occasions sanctioned by the Ordinary the service to begin with the Collect, Epistle, and Gospel. The direction as to the nature of the bread is now imperative—'shall be,' not as before, 'it shall suffice that it be.' When by reason of numbers it

is inconvenient to address each communicant separately, the words, on delivering the elements, may, with the consent of the Ordinary, be said once to as many as shall together kneel at the Holy Table; but they are to be said separately to any communicant desiring it.

"XI. In the Service for Public Baptism of Infants alterations are made in the Rubrics, the effect of which is to permit parents to be sponsors for their own children; and when three sponsors cannot be found, to allow two; and if two cannot be found, to allow one. Also some alterations are made as to the times for administration of the rite. In the exhortation at the beginning of the service, in place of the words 'except he be regenerate and born anew of water and of the Holy Ghost,' are substituted the words 'except a man be born of water and of the Spirit.' Also the Rubric before the words 'I baptize thee' has been altered, and now reads 'he shall dip it (the child) in the water discreetly and warily, if they shall desire it, and he shall be certified that the child may well endure it; otherwise it shall suffice to pour water upon it.' At the end of the service a new Rubric is added, which explains the use of the sign of the cross: 'that it is not thereby intended to add any new rite to this sacrament as a part of it, or necessary to it; or that the using of that sign is of any virtue or efficacy of itself, but only to remind all Christians of the death and cross of Christ, which is their hope and their glory; and to put them in mind of their obligation to bear the cross in such manner as God shall think fit to lay it upon them, and to become conformable to Christ in his sufferings.' In the Public Baptism of Adults the opening exhortation is modified, as in the Service for Infants, and a new Rubric states that persons of riper years may, upon great and urgent cause, be baptized in private.

"XII. In the Catechism a question and answer having relation to the Sacrament of the Lord's Supper have been introduced. In the Rubric directing the curate to catechise, for the words 'on Sundays and Holydays' are substituted 'at such times as he shall think convenient.' The direction in another Rubric that everyone shall have a godfather or godmother as a witness of their confirmation has been omitted.

"XIII. In the Order for Confirmation is inserted a question asking those baptized in riper years if they renew the promise of their baptism. The Rubric as to admission to the Holy Communion is now changed into 'every person ought to present himself for Confirmation (unless prevented by some urgent reason) before he partakes of the Lord's Supper.'

"XIV. In the Form of Solemnization of Matrimony the first Rubric recognises the use of Licenses, and gives directions as to Banns. In the opening exhortation there are some verbal changes. Directions are given for procedure when more than one couple are married. The prayer beginning 'O merciful Lord!' is verbally altered. At the end of the Service there are added the third of the Collects after the Offertory, and the benedictory prayer for grace (2 Cor. xiii. 14).

"XV. In the Visitation of the Sick there is a new Rubric, permitting the minister to edify and comfort the sick as he shall think meet by instruction or prayer; but if the sick person requires the office to be used, the minister shall use it. A precatory form of absolution is substituted for the former; and in the Rubric before it the words 'the sick person shall be moved to make confession' are changed into 'if the sick person feel his conscience troubled with any weighty matter,' and the words 'he shall absolve him' into the words 'the minister shall say thus.' There are added a new alternative Collect after the absolution, and a new prayer for a sick person when his sickness is assuaged. In the Communion of the Sick the Rubric before it is modified, to allow the Collect, Epistle, and Gospel of the day to be used in place of those prescribed. Power is given to shorten the office if the person is sick; and the last Rubric is in some respects varied.

"XVI. In the Order for Burial of the Dead the first Rubric is enlarged, and allows in certain cases a portion of the office to be used for unbaptized persons: an alternative Lesson from 1 Thess. is added to the former one from 1 Cor. xv. In the words said at the grave, beginning 'Forasmuch,' &c., the words 'of His great mercy' are left out. In the prayer beginning 'Almighty God, with whom do live

the spirits of them that depart this life,' for the words 'we give Thee hearty thanks for that it hath pleased Thee to deliver,' &c., are substituted the words 'we bless Thy holy name for all thy servants departed this life in Thy faith and fear.'

"XVII. In the Commination Service the first exhortation has been modified; and in the long exhortation 'fruits of penance' have been changed to 'fruits of repentance.'

"XVIII. Rubrics are placed before the Psalter taken out of the old prefaces.

"XIX. In the Ordination and Consecration Services Church is used instead of Realm, and also of Church and Realm.

"XX. In the Form for the Anniversary of Her Majesty's accession, there are some unimportant variations of Rubrics, and some Collects are omitted.

"XXI. Some emendations are made in the former Irish Service for Visitation of Prisoners; in the Absolution in this Service the same change is made as in the Visitation of the Sick.

"XXII. There are the following new Services:—(1) 'To be used on the first Sunday on which a minister officiates in a church to which he has been instituted'; (2) 'A form of thanksgiving for the blessing of harvest'; (3) 'A form for the consecration of a church'; (4) 'A form of consecration of a churchyard or other burial-ground.'

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